
UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR AND MRS
MARY THOMPSON,

Appellants,

vs.

TONOPAH NORTH STAR TUN-
NEL AND DEVELOPMENT
COMPANY (A CORPORATION),

Appellee.

FILED
OCT -6 1905

TRANSCRIPT OF RECORD.

VOL. I.

(Pages 1 to 304, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Nevada.

Records of Circuit
Court of Appeals

340

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR AND MRS
MARY THOMPSON,

Appellants,

vs.

TONOPAH NORTH STAR TUN-
NEL AND DEVELOPMENT
COMPANY (A CORPORATION),

Appellee.

TRANSCRIPT OF RECORD.

VOL. I.

(Pages 1 to 304, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Nevada.

INDEX

	Page
Answer of Tonopah North Star Tunnel and Development Company.....	24
Appellees' Designation of Record to be Printed....	13
Assignment of Errors.....	587
Assignment of Errors (Additional).....	592
Bill of Complaint.....	14
Bond on Appeal.....	585
Certificate, Clerk's, to Transcript.....	595
Citation.....	596
Clerk's Certificate to Transcript.....	595
Complaint, Bill of	14
Complainants' Exhibit No. 1 (Location Notice of the Dave Lewis Hope Claim).....	73
Complainants' Exhibit No. 2 (Location Notice of the Dave Lewis Hope Lode Claim).....	74
Complainants' Exhibit No. 3 (Photographic View of Ground in Controversy).....	599
Complainants' Exhibit No. 4 (Letter Dated Hawthorne, November 10, 1902, Addressed to Thomas W. Chandler, Esq., San Francisco, Signed by Frank Golden)	126

	Page
Complainants' Exhibit No. 5 (Photographic View of Ground in Controversy).....	601
Complainants' Exhibit No. 6 (Additional and Amended Certificate of Location of the Dave Lewis Hope Mining Claim).....	168
Complainants' Exhibit No. 7 (Certified Copy of Ad- verse Claim)	494
Complainants' Exhibit No. 8 (Deed of Mining Claim Dated April 12, 1902, Charles J. Carr to Thos. W. Chandler and Mary Thompson).....	518
Complainants' Exhibit No. 9 (Deed of Mining Claim Dated May 8, 1902, from C. J. Carr to Thomas W. Chandler)	521
Complainants' Exhibit No. 10 (Deed of Mining Claim Dated May 15, 1902, from David R. Lewis to Jerome P. Porter).....	524
Complainants' Exhibit No. 11 (Deed of Mining Claim Dated June 14, 1902, from Thomas W. Chandler and Mrs. Mary Thompson to Charles J. Carr and John G. Jury).....	526
Complainants' Exhibit No. 12 (Deed of Mining Claim, Dated May 23, 1902, from Jerome P. Porter to Thomas W. Chandler and Mary Thompson)	530

	Page
Complainants' Exhibit No. 13 (Receipt for \$385, Received from Charles J. Carr, Signed by Lothrop & Davis, by J. D. Lothrop)	422
Complainants' Exhibit No. 14 (Registry Receipt)..	576
Complainants' Exhibit No. 15 (Telegram Dated Tonopah, Nev., October 27, 1903, Addressed to Schuyler Duryee, Grand Hotel, San Francisco, Signed by Booker & Bradford)	482
Complainants' Exhibit No. 16 (Trespass Notice) ..	500
Complainants' Exhibit No. 17 (Deed of Mining Claim, Dated June 28, 1902, from D. R. Lewis to R. B. Davis)	577
Decree	54
Defendants' Exhibit "A" (Additional and Amended Certificate of Location of the Dave Lewis Hope Claim)	533
Defendants' Exhibit "B" (Certificate of Location of the Ivanpah Mining Claim)	227
Defendants' Exhibit "C" (Deed, Dated May 15, 1902, from David R. Lewis and Charles J. Carr to Jerome P. Porter)	571
Defendants' Exhibit "D" (Deed of Mining Claim, Dated May 19, 1902, from D. R. Lewis to Jerome P. Porter)	535
Defendants' Exhibit "E" (Additional Certificate of Location of the Ivanpah Lode Mining Claim) ..	538

Defendants' Exhibit "F" (Application for Patent of the Ivanpah Lode Mining Claim)	541
Defendants' Exhibit "G" (Amended and Additional Certificate of Location of Mizpah Intersection)	549
Defendants' Exhibit "H" (Abstract of Title of the Ivanpah Mining Claim)	552
Defendants' Exhibit "I" (Lucky Jim Lode Patent)..	560
Defendants' Exhibit "J" (Triangle Lode Patent)..	565
Diagram	514
Exhibit No. 1, Complainants' (Location Notice of the Dave Lewis Hope Claim)	73
Exhibit No. 2, Complainants' (Location Notice of the Dave Lewis Hope Lode Claim)	74
Exhibit No. 3, Complainants' (Photographic View of Ground in Controversy)	599
Exhibit No. 4, Complainants' (Letter Dated Haw- thorne, November 10, 1902, Addressed to Thomas W. Chandler, Esq., San Francisco, Signed by Frank Golden).....	126
Exhibit No. 5, Complainants' (Photographic View of Ground in Controversy)	601
Exhibit No. 6, Complainants' (Additional and Amended Certificate of Location of the Dave Lewis Hope Mining Claim)	168
Exhibit No. 7, Complainants' (Certified Copy of Ad- verse Claim)	494

	Page
Exhibit No. 8, Complainants' (Deed of Mining Claim, Dated April 12, 1902, from Charles J. Carr to Thos. W. Chandler and Mary Thompson)	518
Exhibit No. 9, Complainants' (Deed of Mining Claim, Dated May 8, 1902, from C. J. Carr to Thomas W. Chandler)	521
Exhibit No. 10, Complainants' (Deed of Mining Claim, Dated May 15, 1902, from David R. Lewis to Jerome P. Porter)	524
Exhibit No. 11, Complainants' (Deed of Mining Claim, Dated June 14, 1902, from Thomas W. Chandler and Mrs. Mary Thompson to Charles J. Carr and John G. Jury)	526
Exhibit No. 12, Complainants' (Deed of Mining Claim, Dated May 23, 1902, from Jerome P. Porter to Thomas W. Chandler and Mary Thompson)	530
Exhibit No. 13, Complainants' (Receipt for \$385, Received from Charles J. Carr, Signed by Lothrop & Davis, by J. D. Lothrop)	422
Exhibit No. 14, Complainants' (Registry Receipt)..	576
Exhibit No. 15, Complainants' (Telegram, Dated Tonopah, Nev., October 27, 1903, Addressed to Schuyler Duryee, Grand Hotel, San Francisco, Signed by Booker & Bradford)	482

Testimony on Behalf of Plaintiffs—Continued.

Dr. Jerome P. Porter	157
Dr. Jerome P. Porter (cross-examination).....	173
Dr. Jerome P. Porter (redirect examination)..	202
Dr. Jerome P. Porter (recalled)	206
Dr. Jerome P. Porter (cross-examination)	208
Dr. Jerome P. Porter (in rebuttal)	487
Charles J. Young	150
Charles J. Young (cross-examination)	154
Charles J. Young (redirect examination).....	156

Testimony on Behalf of Defendant:

J. G. Booker	478
J. G. Booker (cross-examination)	479
J. G. Booker (redirect examination)	481
J. G. Booker (recross-examination).....	483
Wilson Brougher	447
Wilson Brougher (cross-examination).....	448
Uri B. Curtis	351
Uri B. Curtis (cross-examination)	355
J. T. Davis	447
R. B. Davis	408
R. B. Davis (cross-examination)	419
R. B. Davis (redirect examination).....	435
R. B. Davis (recross-examination)	438
Frank Golden	453
Frank Golden (cross-examination)	456

	Page
Testimony on Behalf of Defendant—Continued:	
W. J. Harris.....	379
W. J. Harris (cross-examination)	391
Dr. A. L. Hudgens	449
Dr. D. L. Hudgens (cross-examination).....	451
Dr. A. L. Hudgens (redirect examination)....	452
Dr. A. L. Hudgens (recross-examination).....	452
Frank M. Ish	212
Frank M. Ish (cross-examination)	238
Frank M. Ish (redirect examination)..	271
Frank M. Ish (recalled)	291
Frank M. Ish (cross-examination)	294
Frank M. Ish (redirect examination)	302
T. M. McCabe	373
T. M. McCabe (cross-examination).....	374
T. M. McCabe (redirect examination).....	378
John McCune	304
John McCune (cross-examination).....	310
John McCune (redirect examination)	322
James McQuillan	441
James McQuillan (cross-examination)	442
T. L. Oddie	357
T. L. Oddie (cross-examination)	361
T. L. Oddie (redirect examination)	371
H. Ramsey	469

	Page
Testimony on Behalf of Defendant—Continued:	
H. Ramsey (cross-examination)	474
H. Ramsey (redirect examination)	478
H. Ramsey (recross-examination)	478
Lorin O. Ray	275
Lorin O. Ray (cross-examination)	290
Lorin O. Ray (recalled)	440
Lorin O. Ray (cross-examination)	440
John Salsberry	323
John Salsberry (cross-examination)	328
John Salsberry (redirect examination)	346
John Salsberry (recross-examination)	350

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

October Term, A. D. 1905.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Appellants,

vs.

TONOPAHA NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Appellee.

No. 1241.

**Statement of Errors and Parts of Record on Which Appel-
lants will Rely.**

Following is a statement of the errors on which the appellants intend to rely, and of the parts of the record which they think necessary for the consideration thereof:

ERRORS.

1. That the Circuit Court of the United States, Ninth Circuit, District of Nevada, erred in deciding this case against the plaintiffs and in favor of the defendant.

2. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was located on the hog-back near the summit of Mount Oddie.

3. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was not situated about 300 feet north of the cut near the North Star shaft.

4. That the Court erred in finding and deciding that on October 10, 1901, the ground then located by F. M. Ish as the Ivanpah Claim was vacant public mineral lands subject to location.

5. That the said Court erred in finding and deciding that the location made by F. M. Ish as the Ivanpah Claim was a valid location.

6. That the said Court erred in finding and deciding that F. M. Ish, the locator of the Ivanpah Claim and the owners thereof, fully complied with the law in making said location and have the better right and title to the ground covered by said location.

7. That the said Court erred in finding and deciding that the locator of the Ivanpah Claim could establish by proof outside of the certificate of location all or any of the essential facts required to make a valid location.

8. That the said Court erred in finding and deciding that the proof of such facts outside of the record certificate is prima facie evidence of such other facts as are required to be stated in such certificate.

9. That the said Court erred in finding and deciding that the original notice of location can be filed and recorded as provided by law within ninety days after the date of location thereof, and can be called and considered a certificate of location.

10. That the said Court erred in finding and decid-

ing "If the locator is satisfied with his original notice he can file same within ninety days and can call it his certificate of location."

11. That the said Court erred in finding and deciding that the defendant had proved all necessary facts entitling it to a patent.

12. That the said Court erred in finding and deciding that the plaintiffs failed to establish by a preponderance of evidence the validity of the Dave Lewis Hope Claim, and that it includes a portion of the ground embraced within the boundaries of the Ivanpah location.

13. That the said Court erred in overruling the objection of the plaintiffs to and admitting in evidence the verbal testimony of the witness F. M. Ish, giving his recollection of the contents of the notice of location made by him of the Ivanpah Claim, and in permitting the following question to be answered by said witness in that regard: "Q. Can you state the contents of the notice?"

14. That the said Court erred in denying the motion of plaintiffs to strike out from the testimony of the witness John McCune the purported statements made to him by David Lewis, and in overruling the objection of the plaintiffs to any declarations made by said David Lewis, to any person out of the presence of the co-locator or of the plaintiffs in this action.

15. That the said Court erred in permitting the witness John McCune, over the objection and exception of the plaintiffs, to answer the following question, regarding the statements made to him by David Lewis con-

cerning the monuments pointed out to him by David Lewis, to wit: "Now what did Lewis say about these three monuments?"

16. That the said Court erred in permitting the witness Uri B. Curtis, over the objection and exception of plaintiffs, to answer the following questions: "State whether or not you know the general reputation of Charles J. Carr in the community in which he lived for truth, honesty and integrity, answer yes or no?" "State whether it was good or bad."

17. That the said Court erred in permitting the witness T. L. Oddie to answer the following question, over the objection and exception of plaintiffs, to wit: "Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr, or suspicion, talked about with reference to Mr. Carr, if any?"

18. That the said Court erred in permitting the witness W. J. Harris to testify, over the objection and exception of the plaintiffs, to his other conversation with Dave Lewis, and his examination of a purported time-book kept by said Dave Lewis, and the contents thereof.

19. That the said Court erred in permitting the witness R. B. Davis to testify to the conversations and declarations made by David Lewis over the objection and exception of the plaintiffs, in response to the following question. "Now state to the Court the substance of that trip."

20. That the said Court erred in permitting the witness R. B. Davis to produce an account-book and testify to the items of said account in answer to the following

questions, over the objection and exception of plaintiffs: "I would like you to turn in this book, upon the back of which is marked December 21, 1901, to February 28, 1902, to the accounts for the month of February. The entry in first part of February. Now commencing Feb. 2 see if there is any account with David Lewis," and admitting said account in evidence.

21. That the said Court erred in denying the motion of plaintiffs to strike out from the record the statement of the account of David Lewis with the witness R. B. Davis, as follows, to wit: "A. David Lewis by McCune. 2½ lbs. of powder, 40c; ½ box of caps, 35c; 150 ft. of fuse, 40c."

22. That the said Court erred in overruling the objection to and admitting in evidence the amended certificate of location of the Ivanpah Claim, which was admitted and read in evidence and marked Defendant's Exhibit "E."

23. That the said Court erred in finding and deciding that the plaintiffs are not, and never were, the owners, or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye County, State of Nevada, designated as the Ivanpah Lode Mining Claim.

24. That the said Court erred in finding and deciding that Frank M. Ish and his grantees and successors have been in actual, peaceable, quiet, open, and notorious possession since October, 10, 1901, of the mining

claim and premises and area embraced within the boundary lines of the "Ivanpah" Mining Claim.

25. That the said Court erred in finding and deciding that the defendant is the owner (subject to the paramount title of the United States) and entitled to possession of the premises and area described in the application for patent for the said "Ivanpah" Mining Claim, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, and by virtue of compliance with the Acts of Congress and customs of the Tonopah Mining District, by said defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

26. That the said Court erred in finding and deciding that the plaintiffs have no estate or interest or possession or right of possession of, in or to any part or portion of the said Ivanpah Lode Mining Claim, and that the plaintiffs' claim of any estate or interest or right as against any part or portion of the said Ivanpah Lode Mining Claim is invalid and void.

PARTS OF THE RECORD (To be Printed).

Complaint, subpoena in equity, answer of defendant, replication, opinion, decree, pages 1 to 32, inclusive.

TESTIMONY.

Pages 33 to 49, inclusive.

Page 50, lines 1 to 9, inclusive.

Page 58, lines 14 to 32 inclusive.

Page 59, entire page.

- Page 60, lines 1 to 6, inclusive.
- Page 64, lines 26 to 32, inclusive.
- Page 65, lines 1 to 5, inclusive.
- Page 68, lines 10 to 14, inclusive.
- Page 69, lines 23 to 33, inclusive.
- Page 70, lines 1 to 16, inclusive.
- Page 74, lines 30 to 31.
- Pages 75 to 78, inclusive.
- Page 79, lines 1 to 8, inclusive.
- Page 80, lines 11 to 32, inclusive.
- Pages 81 to 88, inclusive.
- Page 89, lines 1 to 26 inclusive.
- Page 98, lines 14 to 30 inclusive.
- Pages 99 to 108, inclusive.
- Page 109, lines 1 to 14 inclusive.
- Page 115, lines 23 to 32 inclusive.
- Pages 116 and 117.
- Page 118, lines 1 to 15 inclusive.
- Page 124, line 32.
- Page 125, lines 1 to 27, inclusive.
- Page 127, lines 15 to 32 inclusive.
- Page 128, lines 1 to 13, inclusive.
- Pages 129 to 131, inclusive.
- Page 132, lines 1 to 28, inclusive.
- Page 135, lines 12 to 31, inclusive.
- Pages 136 to 145, inclusive.
- Page 147, lines 1 to 27, inclusive.
- Page 149, lines 26 to 32, inclusive.
- Pages 150 to 154, inclusive.
- Page 155, lines 1 to 18, inclusive.

Page 158, lines 3 to 12 inclusive.

Page 160, lines 20 to 32 inclusive.

Page 161 to 172, inclusive.

Page 173, lines 1 to 4, inclusive.

Page 174, line 17.

Page 175, lines 26 to 32, inclusive.

Page 176, lines 1 to 6, inclusive.

Page 177, lines 6 to 10, inclusive.

Page 177, lines 19 to 31, inclusive.

Page 178, entire page.

Page 179, lines 1 to 13 inclusive, omitting "I" at end of line 13.

Page 180, beginning with "Up till the" on line 14 and ending with last word on line 20.

Page 181, lines 6 to 31, inclusive.

Page 182, line 1.

Page 183, lines 24 to 31, inclusive.

Page 184, entire page.

Page 185, lines 1 to 10, inclusive.

Page 185, lines 25 and 26.

Page 187, lines 10 to 21, inclusive.

Page 188, lines 6 to 30, inclusive.

Page 190, lines 5 to 31, inclusive.

Page 191, lines 1 and 2.

Page 191, lines 19 to 29 inclusive.

Page 192, lines 30 to 32, inclusive.

Pages 192½ to 194, inclusive.

Page 195, lines 1 to 11, inclusive.

Page 195, lines 28 to 31, inclusive.

Pages 196 to 226, inclusive.

- Page 227, lines 1 to 11, inclusive
Page 228, lines 14 to 31, inclusive.
Page 229, lines 1 to 25, inclusive.
Page 231, lines 10 to 31, inclusive.
Page 232, lines 1 to 15, inclusive.
Page 233, lines 5 to 8, inclusive.
Page 233, lines 31 and 32.
Pages 234, lines 1 to 9, inclusive.
Page 241, line 32.
Page 242, lines 1 to 9, inclusive.
Page 243, lines 9 to 28, inclusive.
Page 247, lines 12 to 32, inclusive.
Pages 248 to 252, inclusive.
Page 253, lines 1 to 13, inclusive.
Page 254, lines 7 to 32, inclusive.
Page 255, entire page.
Page 256, line 1.
Page 258, lines 5 to 7, inclusive.
Page 258, lines 25 to 32, inclusive.
Page 259, lines 1 to 18, inclusive.
Page 260, lines 23 to 32, inclusive.
Page 261, entire page.
Page 262, lines 1 to 27, inclusive.
Pages 264 to 267, inclusive.
Page 268, lines 1 to 19, inclusive.
Page 269, lines 27 to 33, inclusive.
Pages 270 to 274, inclusive.
Page 275, lines 1 to 28, inclusive.
Page 280, lines 26 to 32, inclusive.
Page 281, lines 1 to 6, inclusive.

Page 281, lines 31 and 32.

Pages 282 to 286, inclusive.

Page 287, lines 1 to 6, inclusive.

Page 288, lines 4 to 33, inclusive.

Page 289, lines 1 and 2.

Page 290, lines 1 to 20, inclusive.

Page 291, lines 13 to 29, inclusive.

Page 294, lines 26 to 32, inclusive.

Page 295, entire page.

Page 296, lines 1 and 2.

Page 296, lines 19 to 30, inclusive.

Pages 297 to 308, inclusive.

Page 309, lines 1 to 28, inclusive.

Pages 310, lines 5 to 32, inclusive.

Pages 311 to 324, inclusive.

Page 325, lines 1 to 23 inclusive.

Page 327, lines 2 to 30, inclusive.

Page 328, lines 1 to 12, inclusive.

EXHIBITS.

Plaintiffs' 7, pages 329 to 346, inclusive, and plat.

Plaintiffs' 10, page 354, lines 18 to 32, inclusive.

Plaintiffs' 10, pages 355 and 356.

Plaintiffs' 12, pages 360 to 362, inclusive.

Defendants' "E," pages 367 to 369, inclusive.

Defendants' "F," pages 370 to 375, inclusive.

Defendants' "H," page 380, lines 1 to 26, inclusive.

Defendants' "H," page 383, lines 12 to 31 inclusive.

Defendant's "H," pages 384 and 385.

Orders enlarging time for filing, pages 397 to 398.

EXHIBITS.

Plaintiffs' 14, page 399.

Plaintiffs' 17, pages 400 and 401.

Appeal, pages 402 and 403.

Appeal bond, pages 404 and 405.

Assignments of error, pages 406 to 411, inclusive.

Certification of clerk, page 412.

Citation with admission of service on back, etc., page 413.

Photograph of ground in controversy. (Plaintiffs' Exhibit 3.)

Photograph of cut. (Plaintiffs' Exhibit 5.)

The foregoing nine pages and this page contain the errors on which the appellants intend to rely, and a statement of the parts or portions of the record which they deem essential for the proper consideration thereof. In addition to several exhibits specifically named on pages 9 and 10 hereof, the following exhibits are embraced in the pages of testimony hereinbefore enumerated:

Plaintiffs' 1, 2, 4, 6, 15.

Defendant's "B."

Plaintiffs' exhibit 16 forms part of Exhibit 7.

The following exhibits have been omitted by the appellants:

Plaintiffs' 8, 9, 11, 13.

Defendant's "A," "C," "D," "G," "I," "J," and part of "H."

Dated at San Francisco, California, this thirteenth day of September, 1905.

WELLES WHITMORE,
GAROUTTE & GOODWIN,
Attorneys for Appellants.

[Endorsed]: No. 1241. United States Circuit Court of Appeals, Ninth Circuit. Jerome P. Porter, et al., Appellants, v. Tonopah North Star Tunnel and Development Company, a Corporation, Appellee. Statement of Errors and Parts of Record on which Appellants Rely. Copy of within received reserving rights to all exceptions, Sep. 14, 1905. Campbell, Matson & Campbell, Key Pittman, Attorney for Appellee. Garoutte & Goodwin, Welles Whitmore, Attorneys for Appellants. Filed September, 14, 1905. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

October Term, A. D. 1905.

JEROME P. PORTER, JOHN G. JURY, THOMAS W. CHANDLER, CHARLES J. CARR and Mrs. MARY THOMPSON,	}	No. 1241.
Appellants,		
vs.		
TONOPAH NORTH STAR TUNNEL AND DEVELOPING COMPANY (a Corporation),	}	
Appellees.		

Appellees' Designation of Record to be Printed.

Counsel for appellees hereby designate that all parts of the record omitted by counsel for appellants in their statement of errors and parts of the record on which appellants rely, be printed, that is to say, they require that the entire record in the above-entitled action on file in the office of the clerk of the United States Circuit Court of Appeals be printed.

CAMPBELL, METSON & CAMPBELL,
KEY PITTMAN,
K. M. JACKSON,

Attorneys for Appellees.

[Endorsed]: No. 1241. United States Circuit Court of Appeals, Ninth Circuit. Jerome P. Porter et al., Ap-

pellants, vs. Tonopah North Star Tunnel and Development Co., Appellees. Appellees' Designation of Record to be Printed. Due service of within designation of record to be printed, admitted this 20th day of September, 1905. Garoutte & Goodwin, Welles Whitmore, Attorneys for Appellant. Filed Sep. 20, 1905. F. D. Monckton, Clerk.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPING COMPANY (a
Corporation),

Defendant.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of
the United States, Ninth Circuit, in and for the
District of Nevada:

Jerome P. Porter, John G. Jury, Thos. W. Chandler,
Charles J. Carr and Mrs. Mary Thompson, bring this,
their bill of complaint against the defendant above
named, Tonopah North Star Tunnel and Development

Company, a corporation of the State of Nevada, and thereupon your orators complain and allege:

That your orators, each and all, are citizens of and residents within the State of California.

That the defendant above named, Tonopah North Star Tunnel and Development Company, is a corporation organized and existing under the laws of the State of Nevada, and is a citizen of and resident within the State of Nevada, and a nonresident of the State of California, where your orators reside.

That on the 26th day of August, 1901, your orators and their predecessors in interest were and ever since the said 26th day of August, 1901, your orators and their predecessors in interest, have been and your orators now are the owners (subject only to the paramount title of the United States) and in the possession and entitled to the possession of that certain mining claim containing a lode of rock in place bearing gold, silver and other valuable minerals situate in the Tonopah Mining District, Nye County, State of Nevada, called the "Dave Lewis Hope" or "Mizpah Intersection" mining claim, and more particularly described as follows:

Commencing at apex of hill at post in monument, being the discovery monument, and running north 8° west, five hundred feet to center end post marked north end center Mizpah Intersection; thence three hundred feet west 8° south to the northwest corner post, marked northwest corner Mizpah Intersection; thence seven hundred and fifty feet south 8° east to the west center side line post marked west center side line Mizpah In

tersection; thence seven hundred and fifty feet south 8° east to southwest corner marked SW. corner Mizpah Intersection; thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection; thence three hundred feet east 8° north to southeast corner post marked SE. corner post Mizpah Intersection; thence seven hundred and fifty feet north 8° west to east center side line marked E. center side line Mizpah Intersection; thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. corner post Mizpah Intersection; thence three hundred feet west 8° south to north center end post marked north center end post Mizpah Intersection, closing.

Your orators further allege that the defendant above named claiming to be the owner of an alleged adjacent mining claim, called the "Ivanpah Lode," on or about the 20th day of August, 1902, wrongfully and unlawfully caused said alleged "Ivanpah Lode" mining claim to be so surveyed as to cross upon and overlap the said Dave Lewis Hope or Mizpah Intersection claim or lode, and include a portion thereof described as follows: Beginning at the said post marked N. end center of the said Dave Lewis Hope (or Mizpah Intersection) mining claim, and running thence S. 82° W. 242 feet to a point at the intersection of the north boundary of the said Dave Lewis Hope (or Mizpah Intersection) claim with the west boundary of the said Ivanpah Lode claim; thence S. $3^{\circ} 24'$ E. 760 feet to the said post marked W. center side line of the said Dave Lewis Hope (or Mizpah Intersec-

tion) mining claim; thence S. 8° E. 440 feet to the intersection of the west boundary of the Dave Lewis Hope (or Mizpah Intersection) claim with the south boundary of the Ivanpah Lode claim; thence N. $86^{\circ} 39'$ E. 560 feet to corner No. 3 of the said Ivanpah Lode claim; thence N. $3^{\circ} 24'$ W. 490 feet to the post marked E. center side line of the Dave Lewis Hope (or Mizpah Intersection) claim; thence north 8° W. 750 feet to the post marked NE. corner of the Dave Lewis Hope (or Mizpah Intersection) claim; thence S. 82° W. 300 feet to the place of beginning and containing approximately 9.92 acres of ground.

That thereafter, and on or about the 19th day of September, 1903, the said defendant filed the field-notes and a diagram of said survey of the said alleged Ivanpah Mining Claim and also an application for a United States patent for said alleged mining claim in the United States Land Office at Carson City, Nevada, and on, to wit the 19th day of September 1903 caused the Register of said land office to give notice of said application for a patent by publication as required by law. That in and by said application for patent the said defendant wrongfully and unlawfully set up and alleged that it was and is the owner and in possession of the whole of the said alleged Ivanpah mining claim inclusive of the premises last above described and the lode therein, part of the said Dave Lewis Hope (or Mizpah Intersection) mining claim and lode, and the property of your orators.

That your orators, during the sixty days period of

publication for patent for said alleged Ivanpah mining claim, to wit, on the 17th day of November, 1903, filed in said land office under oath a protest and adverse claim to said application in due form, and showing the nature, extent and boundaries of the adverse claim of your orators, and thereupon proceedings on said application in said land office, were and are stayed to await the determination, by a court of competent jurisdiction of the right of possession to said last above-described premises and the right of the respective parties therein and thereto, and to that end your orators bring this suit, the period of thirty days not having elapsed since the filing of said protest and adverse claim.

That the said defendant maintains and prosecutes said application for patent for the said alleged Ivanpah Mining Claim, and thereby the title and possession of your orators in and to the said last above-described premises, being the area thus brought in conflict between the said Dave Lewis Hope (or Mizpah Intersection) Mining Claim and the said alleged Ivanpah Mining Claim, are wrongfully and unlawfully impeached, clouded and encumbered, and the value of your orators' estate and property therein greatly depreciated to your orators' great and irreparable damage.

That the claim of the said defendant made as aforesaid is without any right whatsoever, and that it has no estate, right, possession, right of possession or interest in said conflict area, or any part or parcel thereof.

And your orators further show that said mining claim and premises in controversy in this action and the said

area in conflict, as aforesaid, being the premises last above described, and the lode therein are of great value, to wit of the value of more than \$10,000.00.

In consideration whereof, and inasmuch as your orators can have no adequate relief except in this court, and to the end therefore that the said defendant may, if it can, show why your orators should not have the relief prayed, and make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of its remembrance, knowledge, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being expressly waived.

And your orators pray that your Honors may decree that said defendant has no estate, interest, possession, or right of possession, in or to said area in conflict between the said Dave Lewis Hope (or Mizpah Intersection) and the said alleged Ivanpah mining claim, and the lode therein, and that your orators be decreed to be the owners (subject only to the paramount title of the United States), and lawfully in and entitled to the possession of the said last above-described premises, being said area in conflict, as aforesaid, and the lode therein, and that your orators' title therein and thereto and possession thereof be quieted and confirmed as against said defendant and all persons claiming by, through or under it, and that said defendant has not, and never had, any estate, possession, right of possession, title or interest whatever of, in or to said area in

conflict, as aforesaid, or the lode therein, or any part or parcel thereof.

That said defendant and its agents, officers, servants and employees, pending this suit and upon the trial, be perpetually restrained and enjoined from entering in or on said conflict area, or the lode therein, or any part thereof, or mining in or extracting any ores or minerals therefrom, and from in any way interfering with the possession thereof. And that your orators have such other and proper relief, including costs as may seem to your Honors meet and agreeable to equity.

May it please your Honors to grant unto your orators a writ of subpoena of the United States of America, directed to the said defendant Tonopah North Star Tunnel and Development Company, a corporation, commanding it, on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

GAROUTTE & GOODWIN,
Solicitors for Plaintiff.

State of California,

City and County of San Francisco,—ss.

Charles J. Carr, being first duly sworn, upon his oath deposes and says, that he is one of the plaintiffs above named; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein

stated upon information or belief, and as to those matters he believes it to be true.

CHARLES J. CARR.

Subscribed and sworn to before me this 11th day of December, 1903.

[Seal]

J. J. KERRIGAN,

Notary Public in and for the City and County of San Francisco.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada. Jerome P. Porter, et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Bill of Complaint. Filed December 15th, 1903, T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Garoutte & Goodwin, Attorneys at Law. Mutual Savings Bank Building, 708 Market St., San Francisco. Telephone, Bush 762.

Subpoena in Equity.

The President of the United States of America, to Tonopah North Star Tunnel and Development Company, a Corporation, Greeting:

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States for the District of Nevada, in the Ninth Judicial Circuit, on the 1st day of February, 1904, to answer unto a bill of complaint exhibited against you, in said court, by Jerome P. Porter, John G. Jury, Thos. W.

Chandler, Charles J. Carr and Mrs. Mary Thompson, plaintiffs, and to do further and receive whatever said Court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, and the seal of said Circuit Court hereto affixed, at Carson City, Nevada, this 15th day of December, 1903.

[Seal]

T. J. EDWARDS,

Clerk.

GAROUTTE & GOODWIN,

Solicitors for Plaintiff.

MEMORANDUM.

The said defendant is to enter its appearance in the suit above mentioned, in the clerk's office at Carson City, Nevada, on or before the day at which the above subpoena is returnable, otherwise the bill may be taken pro confesso.

T. J. EDWARDS,

Clerk U. S. Circuit Court, District of Nevada.

RETURN.

In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.

JEROME P. PORTER et al.,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT CO. a (Cor-
poration),

Defendant.

No. 771.

I hereby certify and return that I received the within and hereto annexed subpoena in equity on the 16th day of December, 1903, and served the same upon W. J. Harris, secretary of the North Star Tunnel and Development Company, a corporation, at Reno, Nevada, on the 16th day of December, 1903, by showing him the original subpoena in equity, and delivering to him a copy thereof, together with a certified copy of the complaint, duly certified by the clerk of the U. S. Circuit Court at Carson City, Nevada, to be a full, true and correct copy of the original complaint on file and of record in his office in the above-entitled case.

J. F. EMMITT,
U. S. Marshal.

By L. Stern,
Deputy.

MARSHAL'S FEES AND EXPENSES.

Mileage—31 mi. at 12 cts.....	\$3.72
1 service	4.00
	<hr/>
	\$7.72

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tunnel and Development Company, a Corporation. Subpoena in Equity. Filed on Return, December 28, 1903. T. J. Edwards, Clerk. By H. D. Edwards, Deputy.

*In the Circuit Court of the United States, Ninth Circuit,
in and for the District of Nevada.*

JEROME P. PORTER, JOHN G. JURY,
THOS. W. CHANDLER, CHARLES
J. CARR and Mrs. MARY THOMP-
SON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT CO. (a Cor-
poration),

Defendant.

**Answer of Tonopah North Star Tunnel and Development
Company.**

Answer of Tonopah North Star Tunnel and Development Company, a corporation, defendant herein, to bill of complaint of Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, complainants.

The above-named defendant now and at all times hereafter saving to itself all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken

to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

That this defendant has not sufficient knowledge or information upon which to base a belief as to whether said plaintiffs are citizens of or residents within, or any of them is a citizen of or resident within the State of California, and basing its denial upon that ground, this defendant denies that said plaintiffs are citizens of or residents within or any of them is a citizen of or resident within the State of California.

Further answering said bill of complaint, defendant denies that on the 26th day of August, 1901, or at any other time, said plaintiffs or their predecessors in interest were, or any of them was, or that ever since the 26th day of August, 1901, or at any other time, said plaintiffs have been or now are the owners of or any of them has been or now is the owner of or in the possession of or entitled to the possession of that certain alleged mining claim described in said bill of complaint, called the "Dave Lewis Hope" or "Mizpah Intersection" Mining Claim, or any part thereof, subject only to the paramount title of the United States, or otherwise or at all.

Further answering said bill of complaint, defendant denies that claiming to be the owner of an alleged adjacent mining claim called the "Ivanpah Lode" Mining Claim, or otherwise, on or about the 20th day of August, 1902, or ever or at all, wrongfully, or unlawfully, or

otherwise, it caused said "Ivanpah Lode" Mining Claim to be surveyed so as to cross upon or overlap the said alleged "Dave Lewis Hope" or "Mizpah Intersection" claim or lode mentioned in said bill of complaint, or to include the portion thereof described in said bill of complaint, or any other portion thereof whatsoever; and in this behalf defendant alleges that the survey of said "Ivanpah" Mining Claim, mentioned in said bill of complaint was rightfully, lawfully and correctly made and included no part or portion of said alleged "Dave Lewis Hope" or "Mizpah Intersection" Mining Claim.

Further answering said bill of complaint, defendant admits that the said defendant filed field-notes and diagram of said survey of the said "Ivanpah" mining claim, and also an application for a United States patent for said mining claim last mentioned, in the United States Land Office at Carson City, Nevada, and caused the Register of said land office to give notice of said application for a patent by publication as required by law; but denies that such filing was had or such notice was given on the 19th day of September, 1903, and alleges that such filing was had and such notice was given on the 14th day of September, 1903.

Further answering said bill of complaint, defendant denies that in or by said application for patent or otherwise or ever or at all the said defendant wrongfully or unlawfully, set up or alleged that it was or is the owner of or in the possession of the whole or any part of the said "Ivanpah" mining claim; denies that the said application included the "Dave Lewis Hope" or "Mizpah

Intersection" mining claim, described in said bill of complaint, or the lode therein, or any part of either thereof and denies that any part of the "Ivanpah" mining claim is a part of the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim, or lode, or is the property of or in the possession of said plaintiffs; and in this behalf defendant alleges that at all the times herein mentioned it was and is the owner and in possession of the whole of said "Ivanpah" mining claim.

Further answering said complaint, defendant denies that during the sixty days period of publication for patent for said "Ivanpah" mining claim, to wit, on the 17th day of November, 1903, or at all, plaintiffs or any of them filed in said land office under oath, or otherwise, a protest and adverse claim, or protest or adverse claim to said application, in due form, or as prescribed by law, or at all, and in this behalf defendant alleges that the plaintiffs did not nor did any of them, on the 17th day of November, 1903, or at any other time or at all, file or cause to be filed, at the said land office, any plat or diagram of survey of the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim, showing the nature, extent or boundaries of said alleged adverse claim of plaintiffs or any of them as prescribed by law.

Further answering said bill of complaint, defendant denies that by said application the title and possession, or title or possession of said plaintiffs, or any of them, in or to the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim described in said bill of com-

plaint, or in or to any part thereof, or in or to the area or any part thereof thus or otherwise brought in alleged conflict between the said alleged "Dave Lewis Hope" or "Mizpah Intersection" mining claim and the said "Ivanpah" mining claim, are or is wrongfully or unlawfully or otherwise impeached, clouded or encumbered, or that the value of the alleged estate or property of said plaintiffs or any of them therein has greatly or at all depreciated, or that said plaintiffs or any of them have sustained great or irreparable or any damage.

Further answering said bill of complaint, defendant denies that the claim of the said defendant is without any right whatsoever, or that it has no estate, right, possession, or right of possession, or interest in said alleged conflict area, or any part or parcel thereof, but, on the contrary, defendant alleges that the said mining claim, to wit, the "Ivanpah" mining claim, as described in its said application for a patent therefor, and the whole thereof, is the exclusive property of said defendant (subject only to the paramount title of the United States), and has been the exclusive property (subject only to such paramount title) of said defendant and its predecessors in interest and grantors, ever since the 10th day of October, 1901, and that the alleged claim of the said plaintiffs made in their said bill of complaint to that portion thereof described in said bill of complaint, is without any right whatsoever; and that neither said plaintiffs, nor any of them had or have any estate, right, title, interest or possession, in or to said

“Ivanpah” mining claim or in or to any part or parcel thereof.

And for further answer and defense to this action and to said bill of complaint, defendant alleges that on the 10th day of October, 1901, and at all times prior thereto, the mining claim and premises and the area now embraced within the boundary lines of the “Ivanpah” mining claim, as described in defendant’s application for a patent mentioned in said bill of complaint, were vacant and unoccupied mineral lands of the United States of America; that on the date last aforesaid, one Frank M. Ish, a citizen of said United States, discovered a ledge, or lode of gold and silver bearing quartz or other rock in place, within the present boundaries of the said “Ivanpah” mining claim, as described in said application for patent, located the same and distinctly marked on the ground the said boundaries, so that said boundaries could be readily traced, and then and there entered into possession of said “Ivanpah” mining claim and premises, and that said Ish and his grantees and successors ever since the date last aforesaid have been and now are in the actual, peaceable, quiet, open and notorious possession of said “Ivanpah” mining claim, holding and claiming the same and the whole thereof in their own right (subject only to such paramount title) and adversely to all persons whomsoever.

And for a further answer and defense to this action, said defendant alleges that said locator of said “Ivanpah” mining claim and his grantees and successors in interest since the 10th day of October, 1901, in all re-

spects have held, possessed and worked said mining claim according to and in all respects have complied with the provisions of title thirty-two, chapter six of the Revised Statutes of the United States, and of the Acts of Congress amendatory thereof, or supplemental thereto, and of the Act of the legislature of the State of Nevada entitled "An act relating to the location, relocation, manner of recording lode and placer claims, mill-sites tunnel rights, amount of work necessary to hold possession of mining claim, and the rights of co-owners therein," approved March 16, 1897, and of the acts of the legislature of the State of Nevada amendatory thereof and supplemental thereto and in all respects have complied with the laws, regulations, rules and customs of miners in force in the Tonapah Mining District where said claim is located.

Defendant further alleges that it is now the owner (subject to such paramount title), in the possession, and entitled to the possession of the "Ivanpah" mining claim, as described in said application for a patent, and that by itself, its predecessors in interest and grantors, has been such owner (subject to such paramount title) and has been so in the possession of and so entitled to the possession of the whole thereof, ever since the 10th day of October, 1901, and that it holds and owns the same (subject to such paramount title) by virtue of the location thereof, made as aforesaid and by various mesne conveyances made to it by said locator and his grantees and successors in interest; and by virtue of the said acts of Congress, the said statute of the State of Ne-

vada, and said rules, laws and customs of said mining district and by virtue of a full compliance thereof and therewith, by this defendant and its predecessors in interest and grantors ever since the 10th day of October, 1901.

This defendant further alleges that neither said plaintiffs nor any of them, have any right, title, claim or interest whatsoever in or to said "Ivanpah" mining claim, or any part thereof.

And this defendant denies all and all manner of right, title or interest claimed by said plaintiffs, or any of them, in said bill of complaint to any part of said "Ivanpah" claim.

And this defendant denies all and all manner of unlawful combinations or unlawful acts wherewith it is by said bill charged; with this, if there is any other matter, cause or thing in said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays the decree of this court that said plaintiffs are not the owners of or entitled to the possession of any portion of said "Ivanpah" mining claim, and said plaintiffs have no estate, interest, possession or right of possession in or to said area in alleged conflict, between the said "Dave Lewis Hope" or "Mizpah

Intersection" Mining Claim and the "Ivanpah" Mining Claim, or the lode therein; and that defendant be decreed to be the owner and lawfully in and entitled to the possession of the whole of said "Ivanpah" Mining Claim; and that said plaintiffs have not and never had any estate, possession, right of possession, title, or interest whatever of, in or to said "Ivanpah" Mining Claim, or any of the lodes therein, or of, in or to said area in alleged conflict or the lode or lodes therein, or any part or parcel thereof; and defendant humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT CO. (a Corporation), Defendant.

By H. RAMSEY,
Its Vice-President.

K. M. JACKSON,
KEY PITTMAN,
CAMPBELL, METSON & CAMPBELL,
Solicitors for Defendant.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

W. H. METSON.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

H. Ramsey, being first duly sworn, deposes and says: That he is the vice-president of the corporation defendant in the above-entitled cause; that he has heard

the foregoing answer read and knows the contents thereof; that the same is true of his own knowledge except as to the matter therein stated on information and belief and that as to those matters he believes it to be true.

H. RAMSEY.

Subscribed and sworn to before me this 12th day of February, 1904.

[Seal]

A. J. HENRY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 771. United States Circuit Court, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, vs. Tonapah North Star Development Co. a Corporation), Defendant. Answer. Due Service of Within Answer Admitted this 12th day of February, 1904, Garoutte & Goodwin, Attorneys for Plaintiff. Filed February 15th, 1904. T. J. Edwards, Clerk. Campbell, Metson & Campbell, Attorneys for Defendant. Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs.

vs.

TONAPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Replication.

These replicants, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr, and Mrs. Mary Thompson, reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Tonapah North Star Tunnel and Development Company, a corporation, for replication thereunto saith that they do and think, aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by these replicants without that, that any other matter or thing in the said answer

contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall direct and humbly pray as in and by their said bill they have already prayed.

GAROUTTE & GOODWIN,
Solicitors for Complainants.

Service is hereby admitted March 4th, 1904.

CAMPBELL, METSON & CAMPBELL,
Attorneys for Defendant.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company (a Corporation), Defendant. Replication. Filed March 17th, 1904. T. J. Edwards, Clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR, and Mrs.
MARY THOMPSON,

Complainants.

vs.

TONAPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

No. 771.

Opinion:

GAROUTTE & GOODWIN, for Complainants.

CAMPBELL, METSON & CAMPBELL and KEY
PITTMAN, for Defendant.

HAWLEY, District Judge (Orally).

This is a suit or proceeding brought in support of an adverse claim and protest filed by the complainants in the United States Land Office at Carson City, Nevada, against the application of the defendant for a patent to certain mining ground situated in Tonapah, Nye County, Nevada, to determine which of the parties has the better right to the mining ground in controversy. The right and interest of the complainants to the land is based upon a location of a mining claim known as the "Dave Lewis Hope," and the amended certificate of location of said claim un-

der the name of the "Mizpah Intersection"; and the right and interest of the defendant to the ground is based upon a location of a mining claim known as the "Ivanpah." The Dave Lewis Hope Claim was located August 26, 1901, by Dave R. Lewis and Charles J. Carr. The notice of location reads as follows: "Location Notice Dave Lewis Hope. Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in a northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah mines owned by J. Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye Co., Nevada. Dated Aug. 26, 1901. Locators. Dave R. Lewis, Chas. J. Carr." This notice was recorded in the County Recorder's office September 2, 1901.

The amended and additional certificate of location of the Dave Lewis Hope, under the name of the "Mizpah Intersection" was made May 17, 1902, by Jerome P. Porter, and reads as follows: "Additional and Amended Certificate of Location. Know all men by these presents that the undersigned Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by the rights of the original discovery, and the loca-

tion heretofore made such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal law and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet; on this lode, vein, ledge or deposit, bearing gold, silver lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with three hundred feet on each side of the middle of said vein at the surface and all veins, lodes, ledges or deposits, and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Locations pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State. The name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery monument there is claimed by me one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein. The general course of this vein is north 8° west by south 8° east. The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate of location is made

and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada. Approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. (Then follows a description of the location by metes and bounds.) Locator. Jerome P. Porter.”

In this amended notice there are several interlineations and changes, and there was more or less controversy as to who made the same. This is especially true as to the erasure of the word “shaft” and substitution of the word “monument.”

There was also another amended and additional certificate of location in pencil, and with more or less interlineations, that was left by Dr. Porter with the recorder. The notices, however, are substantially the same.

The notice of location of the “Ivanpah” by F. M. Ish, of date October 10, 1901, is as follows:

“Certificate of Location. State of Nevada, Nye Co. Know all men by these presents that I, F. M. Ish, have this 10 day of Oct., 1901, located 1500 ft. linear ft. on the Ivanpah lode or vein or deposit, together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. northerly from center of discovery monument. Situated Tonopah Mining District, Nye Co., State

of Nevada, to wit, the south end of this claim adjoins the north side line of the Mizpah mine and crosses a portion of the east end of the Lucky Jim—is situated on the west and northwest slope of the high hill northeast of the town of Tonopah, known as the Oddie Peak.”

This notice was recorded in the office of the District Recorder, and in the office of the County Recorder January 8, 1902. There was but one location notice. As posted on the ground it was called “Notice of Location,” and when recorded it was called “Certificate of Location.”

It will be observed that the Davis Lewis Hope mining claim was prior in point of time to the other claims, and if it included any portion of the ground within the Ivanpah location, and if the law was complied with by the owners of the Dave Lewis Hope as to the work and labor to be done thereon, then it would necessarily follow that a decree should be rendered in favor of complainants. Because “mining claims are not open to relocation until the rights of a former locator have come to an end.” Two locations cannot legally occupy the same space at the same time. However regular in form a junior location might be, it is of no effect as against the rights conferred upon the prior locator so long as the prior location is subsisting.

These principles were announced by the Supreme Court in *Belk vs. Meagher*, 104 U. S. 279, 284, in 1881, and repeated in numerous decisions, including *Del Monte M. Co. vs. Last Chance M. Co.*, 171 U. S. 55, 79, decided in 1897, and have always been followed by the national courts, and are too well settled to require discussion.

The testimony on behalf of the complainants as to the place where the discovery monument of the Dave Lewis Hope was erected, and as to where the notice was posted, taking the directions and distances mentioned in the notice, would so locate the land as to include a portion of the ground embraced in the Ivanpah location. On the other hand, under the testimony of the defendants, the discovery monument with the notice thereon of the Dave Lewis Hope, would locate the ground entirely without the premises covered by the Ivanpah location and would not include the cut claimed to have been made by the locators of the Dave Lewis Hope.

Upon these points, as well as others, the testimony is more or less conflicting, and, in many respects, unsatisfactory. There is more or less uncertainty in the testimony upon all the controlling questions of fact involved in this case.

With reference to the location of the claim and discovery monument on the Dave Lewis Hope, Carr testified that he and Lewis put up nine stakes and monuments on the different lines and courses of the claim, giving the distances and directions, and that the first one that he built was "about 45 or 50 feet" north of "the present shaft where the North Star tunnel is worked"; that this stake "was placed in rocks, and a 3 by 4 scantling in it." This was his starting point. "Our location work was here. * * * I put one notice the first day from the location ground on the vein." At all the corners he placed notices in cans "describing what corners and what directions they were in."

Caper, at Carr's request, in the month of October, 1901, went up on Oddie mountain and stayed there about one hour. He testified that he knew where the North Star hoisting works are now, "but I have never been up there. Q. Where did you go with Mr. Carr on that ground with reference to that shaft, or those hoisting works? A. Well, I don't know exactly, it is close there, somewhere on the side of the hill. * * * Q. What did you see there? A. I see they had a cut there. * * * Q. Describe that cut to the Court. A. There was a cut I think about 15 feet long, and the face was about 10 feet. * * * Q. How wide was it? A. About 4 to 4½ feet. * * * Q. Did you see any monument or stake around there anywhere? A. I see the monument a few feet above his cut up there. * * * Q. How close to the cut? A. Three or four feet, somewhere there. Q. Was there any notice there at that monument? A. He had some paper out of the can, and he read it; I was on the cut at that time, and when I went in there I see his name and Lewis, on the paper."

As to the work done upon the claim, Carr testified that about eight, ten or twelve days after they had put up their monuments, they commenced work right alongside of the location. "We made a cut of three lengths of the shovel, the shovel measures five feet, and that made fifteen feet, and from 4½ to 5 feet wide. Q. How deep was that cut at the face? * * * With reference to your height? A. Well, it was a little over my reach. * * * State to the Court when this work that you have described was completed. * * * A. I guess we were about from

thirty-five to forty days doing it. * * * Thirty-five or thirty-eight or forty days, something like that; long before the required time, anyhow. We had ninety days.

Dr. Porter testified that he first went to Tonopah in the month of November, 1901; that he saw a cut near the present North Star shaft, but paid no particular attention to it at that time; that in the latter part of April, 1902, he went upon the ground with Dave Lewis, and the cut "was still there;" that about the middle of May, having previously obtained a bond on the claim, he enlarged the cut. "The cut then was $4\frac{1}{2}$ feet wide, and I enlarged it to about 14 feet wide, and cut a large adit in the hill. * * * Sunk a prospecting shaft 5 by 8 in the clear" on the vein which was exposed by the cut. In all, he performed over one hundred dollars' worth of work on the cut. He also testified that he had, and introduced a photograph showing the cut as it existed prior to his doing any work thereon; and also another photograph taken after he finished his work. He then testified as to what steps were taken by him on May 17, 1902. On his cross-examination, in describing the posts and monuments, he was asked, "Q. Did you see any location monument there? A. No, sir. Q. All that you saw then were eight monuments? A. Yes." He then described the monuments as they appeared to him in April, 1902, when he went back there. At another time, when testifying about the attachment papers: "Q. I am asking you about point No. 1 on the Carr diagram. Was there a monument at that point on the Dave Lewis Hope Claim? A. I did not see one there."

On behalf of defendant, Frank M. Ish, testified that

prior to October 10, 1901, the date of the Ivanpah location, he examined the ground, and went over the hill to ascertain where there was vacant ground. Among other things, he said: "In looking this ground over I went to every monument that was on that hill that could be seen. Commencing at the north end of the Mizpah—or the east end of the Mizpah, and going across the ground in a northwesterly direction, and whatever ground was vacant to the left of what I thought to be the Silver Star location

* * * I examined all of the monuments that I could see of whatever nature or description was on that ground, and I found in my investigations, up near the top of Mount Oddie, I found the location post, discovery post, of the Dave Lewis Hope claim. I found a monument probably 20 inches high, possibly 2 feet and a half across. * * *

A small monument of rock, and in that monument a small can, a baking powder can or something of that kind, I think, with a removable top, and I took out and read the notice. This notice then claimed, if my recollection serves me right, 500 feet northwesterly, and a thousand feet southeasterly, or northerly and southerly. * * *

I am not exactly positive of that, more than it was, I think, northerly or northwesterly, and southeasterly. Knowing the latitude that prospectors take to get the directions and locations of a claim, I sought to the north for space that would indicate where his lines were, and I found none. I then went to the south again, and examined all the ground along on the line of the Mizpah, or about that point, which would take it about the required distance, and I found none there. There were no side monuments

that I could find, and not knowing further about his ground, I located the Ivanpah.”

After giving a description of how he made the Ivanpah location, where his posts and monuments were placed, etc., upon which there is no controversy, he testified in answer to questions, as follows: “Q. State whether or not there was any excavation in the nature of a cut on that ground in October, 1901, when you went there? A. No, sir, there was absolutely not a breaking of the surface, not a pick point that was visible for a distance of a hundred feet anywhere within the confines of what was then located as the Ivanpah claim.”

He was asked whether any work was done by him on the Ivanpah. “A. Yes, sir, I did not do the work myself, but I employed Mr. L. O. Ray; he subsequently did the work; he did it about the first of December, by driving a cut into the hill which exposed the vein at a depth of ten feet. Q. Was any work done within the limits of the Ivanpah claim subsequent to October 8th or 9th, 1901, other than this work? A. No, sir; there was none done, not a particle. Q. Now, as to 1902, was there any work done within the Ivanpah by anyone? A. Yes, some time in the month of February. * * * I don't know the date. I at that time had charge of a property at a place called Weepah out at Lone Mountain, and employing a number of men, it was necessary for me to go into town very often, that is, quite often, sometimes once a week, sometimes once in two weeks, or oftener. I do not remember the dates, but on returning from one of these trips I saw that an excavation had been made on the side of the mountain at a point

where, very near where the present location of the North Star shaft is. It was new, and I discovered it, as I say, from a long distance. The breaking of the surface of that hill you can see for long distances. It was plainly visible from the town."

His attention was called to a diagram made by Mr. Carr, and he was asked the question, "Assuming that the white lines as made by Mr. Carr are the lines of the Dave Lewis Hope claim, where would the dump made when you were going back and forth to Weepah be inside of those white lines or outside of them? * * * A. I believe it would be clear outside of their lines. Q. About how many feet would it be from the point where you found the Carr notice?" And after specifying certain figures marked on the diagram, he was asked, "Using that as a starting point, how far outside or inside of the westerly side line of the Dave Lewis Hope claim would that dump be? A. It would be well without it."

In the course of his testimony: "Q. Was there a smaller cut at the place where you say you saw this work done in February; was there a small cut prior to February at that place? A. No, sir. Q. Could it have been there and you not have seen it? A. No, sir; it could not have been there and I not have seen it. * * * Q. You have heard Mr. Carr testify that in August of 1901, he put up nine large monuments there on that ground, and put tin cans in each of them, and stakes in each of them, I will ask you whether or not at any time in 1901 you saw any monuments or stakes of the kind or character at the place described by Mr. Carr, except the one where you found

the notice of location? A. No, sir, I never saw them, and I know further that if they had existed I could not have helped but seen them.”

There were eight other witnesses on behalf of the defendant who testified to seeing the location monument and notice of location at or near the point testified to by Mr. Ish, and several of them testified as to the examination of the ground, and finding no posts or monuments on the lines testified to by Mr. Carr previous to the time when Porter made his amended location, and many reasons are given tending to show that the witnesses could not be mistaken. They vary somewhat as to the distance of the location monument from the work in the cut near the North Star shaft, most of them placing it up on top of the hog's back “near the apex of the Mount Oddie.”

Nine witnesses besides Ish testified that there was no work done by anybody at the point testified to by Carr near the North Star shaft, until the month of February, 1902. The testimony upon this point is clear, direct, positive and convincing in its character. It seems unreasonable to believe that the witnesses could have been misled or mistaken.

A brief reference to the record will indicate with sufficient clearness the general character of this testimony.

Ray, a stockholder in the defendant corporation, was familiar with the location. He testified that the first time he saw the cut was “about the 15th of February, 1902”; that he lived at Ray and frequently visited Tonopah; that “the trail I went over time and again in December went right to the side, not more than three feet, from where

that cut was placed afterwards"; that there "never was any cut in that mountain during the month of December, 1901, or at any time previous to that"; that he was over the ground four or five times during the month of January.

Curtis, a wholly disinterested witness, testified that there was no cut or excavation within a radius of 200 feet from where the North Star shaft now is, when he visited the place in November, 1901.

The testimony of Oddie, and several other disinterested witnesses is substantially to the same effect.

Ramsey testified that he was on the ground with Curtis and Salsberry, and that there was no cut or excavation at that place. "Q. How do you know? A. Well, I know because we were right in the particular spot; sat down there for a while, probably half an hour we sat there and talked, Mr. Curtis, Mr. Salsberry and myself. Q. Was there any digging, or use of a pick there at that time? A. I didn't notice any digging at all. Q. Did any of your party do any digging there at that time? A. I did a little digging with a pick; went around and made a little hole a few inches deep. Q. What were you digging on, if anything? A. We were sitting on the ground there, and a kind of streak ran down there; I dug down and dug out some black looking stuff, manganese."

The testimony of John McCune, a typical pioneer mining prospector, is very strong. He knew Dave Lewis, and at one time worked three shifts for him on the Dave Lewis Hope claim along about the first of February, 1902. The work consisted of a crosscut, "an open cut" near

where the North Star shaft is now; "wasn't very far from it sure. Q. Who paid you for that work? A. Dave Lewis." He used powder and steel procured from Davis & Lothrop. Dave Lewis showed him the location monument. "It was up on a ridge * * * a little bit west of north from where we done the work. Q. About how far north would you figure it? * * * A. I didn't have any compass for that. Q. How far would you guess it to be? A. Well, I would guess it probably 300 feet, some place in that neighborhood. * * * Q. When you went up to do this work was there any cut where you started this cut in? A. There was a little work there, not anything to speak of * * * you could not call it work, it was just enough to show that somebody had been on the ground, I guess. Q. Been scratching there? A. Well, that is all it was * * * I could not call it location work at all * * * Oh, it was just enough to show that there was somebody there, it was kind of drawn, or shoveled, the dirt, or I don't know whether they had a shovel at all or not."

It appears from the record that Dave Lewis before his death made a confidant of Mr. Davis, a merchant in Tonopah; deposited his money with him, when he had any; traded with him, and often talked about his property, and of the Dave Lewis Hope claim. The books kept at the store of Davis & Lothrop show the purchase of the material furnished McCune at the request of Lewis at the time mentioned.

In April or May, 1902, having heard much talk about the Dave Lewis Hope, Davis, in the interest of Lewis, and Mr. Harris, the secretary of the defendant, made

an engagement with Lewis and met him on the ground with the avowed purpose of having him show them where the ground was, and what work had been done upon it, etc. Much of the testimony of these witnesses consisted of statements and declarations made by Lewis, which will only be considered as leading up to the facts testified to by the witnesses. Lewis showed them, among other things, the cut at the point near the North Star shaft, and told them the work was done in February, 1902. He also pointed out to them the location monument of the Dave Lewis Hope, about 300 feet northerly up the hill from the cut where he claimed he had done some work. They went to this monument, examined the ground thoroughly all around the vicinity, and found nothing to show that any work had ever been done there.

Eleven witnesses, men of prominence and good standing in Tonopah, and nearly all of them wholly disinterested, testified that they were well acquainted with the general reputation of Charles J. Carr in the community as to truth, honesty and integrity, and that it was bad.

The mere contradiction of a witness does not necessarily warrant the Court in disregarding the whole of his testimony for want of corroboration, but the contradiction may be such as tends to weaken, if not entirely destroy, the force and effect of his testimony. A witness may also be directly impeached by proof that his general reputation for truth, honesty and integrity in the community where he resides is bad.

The burden of proof to establish the validity of the Dave Lewis Hope claim, and that it included some por-

tion of the ground embraced within the boundaries of the Ivanpah location, was upon complainants. They failed to establish these facts by a preponderance of evidence to the satisfaction of the Court.

There was no amended location made to the Dave Lewis Hope until long after the ninety days had expired, within which time it may be conceded for the purpose of this case, that an amended notice of the Dave Lewis Hope claim might have been made, so as to include a portion of the Ivanpah location.

The original location was made August 26th, 1901; the amended location by Porter was not made until May 17, 1902, over eight months after the original location was made, and long subsequent to the date of the location of the Ivanpah claim. This amended location in so far as it covers any portion of the Ivanpah location, in the light of all the facts, is subsequent in time to the rights acquired by the Ivanpah claim. If the amended certificate of location of the Dave Lewis Hope claim had been made and recorded within the ninety days provided by the statute, or at any time thereafter before the Ivanpah was located, then it might be claimed that the record notice thereof would have been *prima facie* evidence of its own sufficiency, as provided by the statute of Nevada. But, as is said in *I Lind. on Mines* (2 ed.), sec. 393: "The real purpose of the record is to operate as constructive notice of the fact of an asserted claim and its extent. When the locator's right is challenged, he should be compelled to establish by proof outside of the certificate all the essential facts, without the existence of which the certificate possesses no po-

tential validity." And further adds: "These facts once proved, the recorded certificate may be considered as *prima facie* evidence of such other facts as are required to be stated therein."

After a careful examination and consideration of all the relevant testimony contained in the record, I am clearly of the opinion that the decided weight of the evidence shows that on the 10th day of October, 1901, the ground then located by Ish as the Ivanpah, was vacant, public mineral land, subject to location; that the Ivanpah was a valid location; that the locator and owners thereof have fully complied with the law, and have the better right and title to the ground covered by such location.

The fact that no amended location of the Ivanpah ground was made within the ninety days after the location, cannot be taken advantage of by the complainants under the facts of this case. I do not understand the law to be, in cases where the original notice is clear, definite and certain, and the boundaries of the claim so marked and monumented that the same can be readily traced and determined, that it is necessary for the locator thereof to file an amended certificate of location, as required by sections 210 and 213 *Cutt. Comp. L. Nev.* That statute was passed for the benefit of the locators, giving them ninety days to perfect their location, to cure defects, if any existed in the original notice, or the marking of the boundaries; mistakes in the directions and courses, etc. The certificate of location, and amended certificates, may always be made within the

ninety days so as to allow the discoverer "to rectify and readjust his lines whenever from any cause he desires to do so, provided he does not interfere with or impair the intervening rights of others." But if the locator is satisfied with his original notice, he can file the same within ninety days, and can call it his certificate of location.

The object of the statutes of Nevada, touching this matter, was fully discussed and stated by this Court in *Tonapah & Salt Lake M. Co. vs. Tonopah M. Co.*, 125 Fed. 389, 396, and the principles there announced are applicable to this case, and fully support the views I have expressed.

The defendant proved all the necessary facts entitling it to a patent. Let a decree be entered in favor of the defendant, with costs.

[Endorsed]: No. 771. In the Circuit Court of the United States, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Complainants, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Opinion. Filed November 28th, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit, in
and for the District of Nevada.*

JEROME P. PORTER, JOHN G. JURY,
THOS. W. CHANDLER, CHARLES
J. CARR and Mrs. MARY THOMP-
SON,

Plaintiffs,

vs.

No. 771.

TONOPAHA NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Decree.

This cause came on regularly to be heard at this term, and the Court having heard the proofs offered in support of the respective parties, and being fully advised in the premises, this Court now finds, orders, adjudges and decrees as follows, to wit:

That said complainants, Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson, are not, and never were, the owners, or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye county, State of Nevada, known and designated as the Ivan Lode Mining Claim, and more particularly described as follows, to wit: Beginning at the said post marked N. and center of the said Dave Lewis Hope (or

Mizpah Intersection) mining claim, and running thence S. 82° W., 242 feet to a point at the intersection of the north boundary of the said Dave Lewis Hope (or Mizpah Intersection) claim with the west boundary of the said Ivanpah Lode Claim; thence S. $3^{\circ} 24'$ E. 760 feet to the said post marked W. center side line of the said Dave Lewis Hope (or Mizpah Intersection) mining claim; thence S. $3^{\circ} 44'$ to the intersection of the west boundary of the Dave Lewis Hope (or Mizpah Intersection) claim with the south boundary of the Ivanpah Lode Claim; thence N. $86^{\circ} 39'$ E. 560 feet to corner No. 3 of the said Ivanpah Lode Claim; thence N. $3^{\circ} 24'$ W. 490 feet to the post marked E. center side line of the Dave Lewis Hope (or Mizpah Intersection) claim; thence north 8° W. 750 feet to the post marked NE. corner of the Dave Lewis Hope (or Mizpah Intersection) claim; thence S. 32° W. 300 feet to the place of beginning and containing approximately 9.92 acres of ground.

That on the 10th day of October, 1901, the mining claim and premises and the areas now embraced within the boundary lines of the "Ivanpah" mining claim, as described in defendants' application for a patent, were vacant and unoccupied mineral lands of the United States of America; that on the date last aforesaid, one Frank M. Ish, a citizen of said United States, discovered a ledge or lode of gold and silver bearing quartz or other rock in place, within the present boundaries of the said "Ivanpah" mining claim, as described in said application for patent, located the same and distinctly marked on the ground the said boundaries, so that said

boundaries could be readily traced, and then and there entered into possession of said "Ivanpah" mining claim and premises and that said Ish and his grantees and successors ever since the date last aforesaid have been and now are in the actual, peaceable, quiet, open and notorious possession of said "Ivanpah" mining claim, holding and claiming the same, and the whole thereof, in their own right (subject to the paramount title of the United States), and adversely to all persons whomsoever.

That said locator of said "Ivanpah" mining claim and his grantees and successors in interest, since the 10th day of October, 1901, in all respects have held, possessed and worked said mining claim, according to and in all respects have complied with all the provisions of law.

That the defendant, the Tonopah North Star Tunnel and Development Company, is now the owner (subject to such paramount title), in the possession, and entitled to the possession of the Ivanpah Mining Claim as described in said application for a patent, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, made as aforesaid, and by virtue of compliance with the acts of Congress and customs of said Tonopah mining district, by this defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

That said complainants have no estate or interest or possession or right of possession of, in or to any part or portion of the said Ivanpah Lode Mining Claim, and that the alleged claim of any estate or interest or right by

said complainants as against any part or portion of said Ivanpah Lode Mining Claim is invalid and void.

That the defendant have and recover of said complainants its costs herein taxed at \$529.30.

Dated at Carson City, Nevada, February 15, 1905.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. United States Circuit Court, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Defendant. Decree. Filed February 20th, 1905. T. J. Edwards, Clerk. Campbell, Metson & Campbell, Attorneys for Defendant, Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

<p>JEROME P. PORTER, JOHN G. JURY, THOS. W. CHANDLER, CHARLES J. CARR and MARY THOMPSON, Plaintiffs,</p>	}	No. 771.
vs.		
<p>TONOPAII NORTH STAR TUNNEL AND DEVELOPMENT COMPANY (a Corporation), Defendant.</p>	}	

Testimony.

The above-entitled cause came on to be heard on the 11th day of July, 1904, before Honorable THOMAS P. HAWLEY, District Judge, when the following proceedings were had and testimony introduced.

Appearances:

GAROUTTE & GOODWIN, for Plaintiff.

CAMPBELL, METSON & CAMPBELL, KEY PITTMAN and K. M. JACKSON, for Defendant.

ADA F. TORREYSON, U. S. Stenographer.

Mr. CHARLES J. CARR, one of the plaintiffs called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Where do you reside?

A. North Berkeley, Berriman Station.

(Testimony of Charles J. Carr.)

Q. In what State? A. California.

Q. How long have you made that your residence or considered that your home?

A. For the last fifteen years.

Q. That was your residence, and you were residing there, were you, when this action was commenced, a year ago, or such a matter? A. I was, yes.

Q. Are you acquainted in the Tonopah Mining District, Mr. Carr? A. Very well.

Q. When were you first there?

A. In October, 1900, we were the first prospectors in there outside of Jim Butler.

Q. When you and Mr. Butler were there state who else was there?

A. My partner Mr. Leidy, Wils Brougher, Mr. Oddie, that was when we first went in there; that was all that was in there, and the Clifford boys.

Q. Was Mrs. Butler there? A. She was, yes.

Q. Now, about what month was this?

A. October, I believe.

Q. October, 1900? A. Yes, sir.

Q. Did you have any lease, or were you in there when the leases were first made on the Mizpah by Mr. Butler?

A. My partner and I had the first lease in there.

Q. You and your partner had the first lease on the Mizpah? A. No, it was a spur off of the Burro.

Q. Did you and your partner work that lease?

A. Yes, sir.

Q. State what the result was, that is, whether you

(Testimony of Charles J. Carr.)

took out money, or whether you worked the lease at a loss?

A. Well, we took out money, made from twenty to twenty-five thousand dollars apiece.

Q. State how long you continued there in Tonopah?

A. Well, I stayed there about thirteen or fourteen months, and went to San Francisco.

Q. So you were there during all the early history and period of the Tonopah Mining District? A. Yes, sir.

Q. Starting in with the fall of 1900, state to the Court whether or not you made any locations?

A. I made a location of the Mining Chance, of the White Elephant, the Midway and the West End.

Q. Those were locations that since have become prominent locations in that district, are they?

A. Yes, sir.

Q. State whether or not, covering that period of time, you helped others there in making locations, Mr. Butler, for instance?

A. I done three locations for Jim Butler.

Q. In making these locations state to the Court whether or not you became familiar with the method and manner of making locations?

A. Well, I made my locations the same as Jim Butler, as I made for him, 1,500 feet long and 300 feet wide.

Q. Were you in the Tonopah Mining District in August, 1901? A. I was.

(Testimony of Charles J. Carr.)

Q. Were you acquainted at that time with a man by the name of Dave Lewis? A. I was.

Q. How long had you known him?

A. I had known him since the camp began there.

Q. Since the camp began? A. Yes, sir.

Q. He was one of the first men in there, was he?

A. He was, yes, sir.

Q. Did you attempt to make a location of any ground in the month of August, 1901?

A. Dave Lewis and I located a claim there, I named it the "Dave Lewis Hope."

Q. Now, state to the court what day that was?

A. The 26th day of August, 1901.

Q. State what you and Mr. Lewis did that day?

A. We located the claim; we put up monuments, it took us two days to put our monuments up, there was nine monuments.

Q. State just what you did?

A. Well, we put up our monuments in two days, and laid off two days; the fifth day we went up and took some oyster cans with us and wrote out the locations and put them down, as is usual and as is required.

Q. State to the court whether or not you put up a monument and stake at what you term the discovery?

Mr. METSON.—We object to leading the witness, let him state what he did.

A. Mr. Lewis got the cans and I went down and got

(Testimony of Charles J. Carr.)

the stakes, what there was, what I could get, there was nine stakes.

Q. What was the size of those stakes?

A. Three by four.

Q. And how long?

A. About two and a half or three feet long.

Q. What did you do with them?

A. We put them in the monuments on top of the locations.

Q. Describe to the Court where the first stake was put?

A. Well, it was put up where we found our lead.

Q. Are you acquainted with what is now known as the North Star shaft, the present shaft where the North Star tunnel is worked? A. I am.

Q. Where was this stake placed with reference to this shaft on the ground?

A. About 40 or 45 feet from that.

Q. About 40 or 45 feet from that in what direction?

A. North.

Q. You say you had nine stakes, state where the other stakes were placed.

A. Well, we located from that point, from the location point, 500 feet northwest, 1,000 feet southeast.

Q. Now, taking this thousand feet southeast from this stake that you described, to what ground did that carry you? A. I do not understand you.

Q. Starting in at the stake that was 45 feet north of the present North Star shaft, and going southeast a

(Testimony of Charles J. Carr.)

thousand feet to what ground did you come, to what mining claim did you come?

A. To the Mizpah ledge.

Q. In other words, you located southeast from your discovery shaft a thousand feet down to the Mizpah ground?

A. Yes, sir.

Mr. METSON.—We object to that on the ground it is leading and argumentative, and putting a conclusion in the mouth of the witness, and we think it is improper.

Mr. GOODWIN.—That is taken in connection with what he has already testified to.

The COURT.—He said he did not understand the question, I think it is simply explanatory, and I will allow the question.

Q. Then you said you located northwest 500 feet from the stake, a distance of 500 feet?

A. Northwest; yes, sir.

Q. State to the court what was done with these other stakes?

A. How I located them, you mean? (Question withdrawn.)

Q. This stake that you say was placed 40 or 45 feet north of the present shaft of the North Star, how was it placed, describe to the court how it was placed, whether it was in rocks?

A. It was placed in rocks and a three by four scantling in it.

(Testimony of Charles J. Carr.)

Q. In other words, this scantling was placed in a mound of rocks, the rocks built around?

A. Right on top of the mound of rocks.

Q. State what was done and where you placed the other stakes?

A. Well, from the northwest corner I measured off 500 feet east, that was the middle monument; from there I measured off a thousand feet to the southeast corner, then I done the same on the other side. Then I measured from the southwest corner to the north-east corner 600 feet.

Q. And what did you place or put there, if anything?

A. I put the same monuments as on the other corners.

Q. Just describe to the court generally what you did there?

A. I had put no monuments up before, after I measured it then I put my monuments up and put scantling in the top of them.

Q. Describe what those monuments consisted of, the size?

A. Four feet at the bottom and three feet high.

Q. Of rock? A. Of rock.

Q. Where was the scantling?

A. The scantling was right on top of the rock, right in the center of the rock.

Q. Go on and describe where you placed each one of these?

(Testimony of Charles J. Carr.)

A. We took these cans and put our location papers in each one, describing each corner, whether it was northeast, or what it was; the northeast corner I put a notice in there describing that corner, and done the same in the southeast corner, and done the same on the southwest corner.

Q. Now I will have to ask you again, how many of those stakes and monuments did you build?

A. Nine.

Q. Where were those nine monuments and stakes placed by you; in other words, when they were built, describe to the court what tract of ground they described, if any, that is what shaped piece of ground they described, if any, on the ground itself.

Mr. METSON.—That is asking for his conclusion, and we ask that the witness state what he did.

The COURT.—You will get at it quicker if he states what he did first, the first monument he built, and then the direction and the number of feet to the second monument, and so on.

A. The first monument I built was the location monument on the mineral belt, the mineral ledge.

Q. Where was the next monument you built?

A. The next monument was the northwest corner.

Mr. GOODWIN.—If your Honor please, so there may be no confusion arise, we have not a plat or survey, only the small one that is in the adverse, and could I

(Testimony of Charles J. Carr.)

have the permission of drawing a diagram, a hypothetical one, on the blackboard?

The COURT.—Certainly.

Mr. METSON.—We would like to have the witness do the drawing, and we object to counsel drawing anything, until he gets through with his measurements and monuments.

The COURT.—The diagram is simply for the purpose of drawing attention, and if it is not right we will find it out. This case is before the court, and it is not going to mislead anybody.

Mr. METSON.—We save an exception.

The COURT.—Note the exception.

(Counsel draws diagram on blackboard.)

Q. Supposing this is north up towards the top, and this is west, the left hand; and this is east, the right hand; and this is south, the bottom of the blackboard, and that the North Star shaft is somewhere, with reference to this diagram, as indicated by that point, now indicate to the court with reference to that diagram approximately where you placed the first stake.

Mr. METSON.—We object to that upon the ground that the question assumes something not proven in this case, and adopting points which the witness should fix, and not counsel.

(Testimony of Charles J. Carr.)

The COURT.—That is true, Mr. Metson, but the idea is to get this witness some place, and that is simply a diagram in connection with that shaft; the shaft is on the ground and you cannot move it. If that is not correct, there would be no trouble, he tells the distance.

Mr. METSON.—This is the point; our theory of the case is that the plaintiffs' location has been floated down on to us, and these monuments, and this shaft, are very material, and that is the reason I enter these protests.

The COURT.—I see no objection; no one is going to be bound by that diagram.

Mr. METSON.—We save an exception. (Question read.)

Q. Do you understand that? Looking at this diagram, taking this top as north, the left hand as west, the right hand east, and the bottom as south, and also taking that little point in there as representing the position of the North Star shaft on the ground, state to the court and indicate on the plat where you placed the first stake approximately.

A. Our location work was here, about there. (Marks the point indicated with figure "1.")

Q. You say there is where you placed the first stake and monument?

A. Here is where I put my first location work, put my monument, put a 3 by 4 stake in the top of it and

(Testimony of Charles J. Carr.)

put a can in there, as the location work, put a can in the location work and a paper in the inside.

Q. State to the court and indicate on the diagram where you placed your next stake.

A. I measured from here—I made a mistake before saying west, it is north; I measured 500 feet from here (Point 1) over the apex of the mountain, and located a claim there (marks the point "2"), that was north-east. I made a mistake in the other when I said it was west, it is east. Then I measured from this stake 600 feet (Point No. 2), northwest. (Marks point "3.")

Q. What did you do and what did you place there?

A. I placed a monument of rocks, a stake 3 by 4 in a can with my location at the end, described in this that it was the northwest corner, that was on the paper in the location can.

Q. Then which way did you measure, if any, and what did you do?

A. Then I measured, I went back here, I was on the hill, on the highest part; I measured from the north-east corner (Point 2) 500 feet, that was the middle one—no, I made a mistake, I measured from there 750 feet, that was the fourth. (Marks point "4.")

Q. What did you place there, if anything?

A. I placed a monument of rocks, pieces of scantling, 3 by 4, describing the northeast center mark.

Q. When you say east center, you mean the east center side line?

(Testimony of Charles J. Carr.)

A. East center side line, yes, sir. From there I measured 750 feet to the southeast corner. (Marks point "5.")

Q. What did you do there, or what did you place there, if anything?

A. I placed a monument of rocks, quite a pile of rocks, 4 by 3. I placed a can with a paper in it describing this corner (No. 5) as the southeast corner; I measured from there 300 feet to here (marks point "6") and placed a monument of rocks, and put a piece of 3 by 4 scantling in it, described that as the end line, south end line.

Q. Now right there, state what stake, if any, that particular monument was near, what I mean by that is with reference to some other ground, the Mizpah or any other?

Mr. METSON.—We object to that as leading.

The COURT.—Strike that out, the stake on any other claim, if any.

A. The Mizpah ledge was the only ledge there at the time; the only stake that was there was the Mizpah, so that it could not have been any other. Then I measured from this center south (Point 6) monument, 300 feet southwest (marks point "7") and built a monument there of 4 by 3 and put a scantling in, and an oyster can in it, and notification in it describing the

(Testimony of Charles J. Carr.)

southwest corner. I measured from there 750 feet, and put this the west center. (Marks point "8.")

Q. What did you place there, if anything?

A. I placed a mound of rocks 4 by 3, and a scantling 3 by 4 with an oyster can, and a location in it describing the west center. That was 750 feet from there to there. (Point 8 to point 3.)

Q. Did you place any other stake?

A. No, not as I know of.

Q. Was there a stake placed at the north end center?

A. The north end center?

Q. Yes? A. Yes.

Q. When did you place that stake?

A. I placed that the first day—oh, you mean the rocks? We put the rocks there the first day.

Q. Indicate on that plat where you placed that?

A. You mean the north center?

Q. Yes, the north center?

A. I overlooked that; 300 feet.

Q. What did you place there?

A. I placed that there the first or second day, I don't know which.

Q. Indicate on the diagram there the position of that stake.

A. Well, this is it. (Marks point "9.") This was 300 feet from here to there (from 3 to 9), and 300 feet from there to there (9 to 2).

Q. What did you place there, a mound and stake just like the others?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Now state whether these stakes and mounds were all placed there the same day or whether the mounds were placed at one time and the stakes at another?

A. The stakes was not placed until five days afterward.

Q. Five days afterward? A. Yes, sir.

Q. When were the mounds built, on what day?

A. The 16th and 17th of the month.

Q. The 16th and 17th?

A. The 26th and 27th, I got the numbers mixed up.

Q. That is, if your notice was dated the 26th, the monuments were built that day and the next day.

Mr. METSON.—We object to that, that is assuming a fact not proven. A. I said it took two days.

Mr. METSON.—It is assuming a notice, that is what I am objecting to.

The COURT.—It is not about that, it is the date, the court understands it.

(Question read.)

A. Yes, sir.

Q. State when with reference to that date you placed the stakes there?

A. Three days afterwards I placed the stakes in cans, and notices; I put one notice the first day from the location ground, on the vein.

(Testimony of Charles J. Carr.)

Q. Will you examine that and state to the court whether that is a copy of the notice?

(Hands paper to witness.)

Mr. METSON.—He can state whether he made it himself, it appears to be a certified copy from the record.

Mr. GOODWIN.—I will withdraw that and ask another question.

Q. Did you make a copy, personally, of the notice that you posted on the discovery shaft or discovery monument? A. Yes, I always do that.

Q. As a matter of fact, in this case did you do it?

A. I did.

Q. What did you do with that?

A. I handed that to Mr. Egan.

Q. Who was he? A. District Recorder there.

Q. Did you cause it to be recorded in the county records? A. With the District Recorder.

Q. With the District Recorder first, and did you afterwards have it recorded with the County Recorder?

A. No, Mr. Lewis had it recorded in the County Recorder's, it was customary, and I had it done in the District Recorder's.

Q. But a copy of the notice that you posted you filed with the District Recorder there, and afterwards it was recorded with the County Recorder?

A. Yes, sir.

Q. In these cans that you say you placed at the corners, you placed notices in those cans?

(Testimony of Charles J. Carr.)

A. Describing what corners and what directions they were in.

Mr. GOODWIN.—If your Honor please we now offer the following location notice:

Complainants' Exhibit No. 1.

LOCATION NOTICE DAVE LEWIS HOPE.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in an northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah Mines owned by J. Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye Co., Nevada. Dated Aug. 26, 1901.

Locators: DAVE R. LEWIS.

CHAS. J. CARR.

750 feet each.

Recorded at request of T. F. Egan, Sept. 2, 1901, at 3 P. M.

W. BROUGHER,

Co. Recorder.

(Testimony of Charles J. Carr.)

Recorded in Book E, pages 123 and 124 of Mining Locations.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of location notice of "Dave Lewis Hope" Claim, Tonopah Mining District, Nevada, recorded on the 2d day of Sept., 1901, at 3 o'clock P. M., and as the same appears of record in Book E of Mining Location, pages 123-124, Nye County, Nevada, Records.

Witness my hand and official seal this 2d day of April, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. COWAN, Deputy.

(Paper admitted in evidence without objection and marked Complainants' Exhibit No. 1.)

Mr. GOODWIN.—We also offer a certified copy of the same notice from the District Recorder.

Complainants' Exhibit No. 2.

DAVE LEWIS HOPE LODGE.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or

(Testimony of Charles J. Carr.)

lode, supposed to run in a northwest and southeast direction with three hundred feet on each side of the vein commencing at this monument and running one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction. This mine is situated in the hill or mountain east of the group of mines known as the Tonopah mines owned by Butler and Co. This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye County, Nev.

Dated Aug. 26th, 1901.

Locators: DAVE LEWIS,
CHAS. CARR.
750 each.

Recorded at request of Chas. Carr, Sept. 2d, 1901,
at 3 P. M.

F. H. LUETJENS,
Deputy Dist. Recorder.

I, Wm. J. Landers, District Recorder of the Tonopah Mining District, do hereby certify that the above is a true and correct copy of the location notice of the Dave Lewis Hope Mining Claim recorded in book B, page 119, of the Tonopah Mining Records.

WM. J. LANDERS,
District Recorder.

Dated this 28th day of March, 1904.

(Paper admitted in evidence, without objection, and marked Complainants' Exhibit No. 2.)

(Testimony of Charles J. Carr.)

Q. Mr. Carr, at that time you were a citizen of the United States? A. Yes, sir.

Mr. METSON.—I suppose that is objectionable, asking for his conclusion. You might ask where he was born.

Q. Where were you born?

A. California, Healdsburg.

Q. Now, the notice which has just been offered in evidence is dated the 26th of August, 1901, and purports to have been recorded in the district records at your request on the 2d day of September following; state to the court whether or not these monuments that you have described here were all up and placed before you recorded that notice with the District Recorder? A. It was, yes; they were all put up and placed before I recorded it; I recorded it the same as I did all the rest of the claims I located.

Q. Now, state to the court what, if any, evidence there was of a ledge at the point where you set up your discovery shaft?

A. There was a vein from four to six inches wide, and traced it for a thousand feet down to the Mizpah ledge.

Q. How did that vein run generally, with reference to the compass?

A. It ran northeast, pretty well east, down to south-westerly.

Q. In other words, it ran northeast and southwest, did it? A. Yes, northeast and southwest.

Q. State to the court whether or not there was any mineral in that vein? A. It assayed from \$2.50 to \$4.20.

Q. Did you have it assayed?

(Testimony of Charles J. Carr.)

A. I had five assays made on it.

Q. And when you say there was a vein there, describe to the court what you mean?

A. Well, there was a vein, it was cropping out from where I put my location work down, I could trace it for a thousand feet, down past the Mizpah ledge.

Q. Were there walls on each side?

A. No, it was just cropping out of the ground, that is all, no walls or anything else.

Q. What was there that caused you or causes you to designate it as a vein?

A. Because it had mineral in it.

Q. How did it differ from the surrounding and adjoining country?

A. Because it was low grade; it was lower grade than the others, it wasn't big enough to start right in to work on it.

Q. That is not what I mean. I will withdraw the question and answer, and will repeat the question. You say there was a vein four, five or six inches wide?

A. Yes.

Q. Was there any difference between the—

A. (Interrupting.) You mean the character of rock?

Q. Yes?

A. It was the same character of rock as the rest of the camp?

Q. As the rest of the camp? A. Yes.

Q. I know, but what I mean is as to the size.

A. The size was from four to six inches wide.

(Testimony of Charles J. Carr.)

Q. When you got to the end of that four or six inches, what did you come against, if anything?

A. It ran into the hill, I could not trace it any further.

Q. That is going along the length of it?

A. As long as it was on the surface I said I could trace it for a thousand feet, while it lasted on the surface, then it ran into the hill.

Q. What I mean is this: If there was a vein from five to six inches wide, how was it standing, perpendicular or how? A. It was on the side of the mountain.

Q. I know, but as you went down on it, if you did go down on it at all, how did it dip?

A. It dipped about—well, you mean about the ledge, when we sunk on it?

Q. Yes, when you go down?

A. It dipped towards the east I reckon.

Q. Dipped into the hill, didn't it?

A. Yes, sir, dipped to the east.

Q. If it dipped to the east there would be something overlying it and something underlying it? A. Yes.

Q. What difference was there between the subject matter that overlay that vein and the subject matter that underlay it, that would cause you to know that there was a vein there, was there any country rock of any kind?

A. It was all country rock; it was porphyry the same as the Mizpah ledge rock.

Q. There was porphyry on both sides of this vein?

A. Both sides of the vein, yes.

Q. And the vein, as you termed it, was quartz?

(Testimony of Charles J. Carr.)

A. Yes, sir, quartz.

Mr. METSON.—Did the witness say that it was quartz?

A. It was quartz.

Mr. GOODWIN.—I will withdraw that question and strike out the answer, and describe to the Court what it was.

A. It was quartz and porphyry, yes, sir; mixed up with a little quartz and porphyry.

Q. Mr. Carr, the recordation with the recorder there is the 2d of September; now, from the 26th of August to the 2d of September, did you do any work on the claim; from the 26th of August, from the time you put up the first discovery shaft, until the 2d of September, did you do any work on that claim? A. Yes, sir.

Q. From the 26th of August to the 2d of September, did you do any work upon the claim other than you have described? A. Yes, sir.

Q. Now understand my question. You say you put up your notice and marked these boundaries here from the 26th of August up to the 2d of September, the day you had the notice recorded? A. Yes, sir.

Q. During that time, that seven days, did you do any work on the claim? A. No, not right away.

Q. State when, if at all, you went back there?

A. About eight or ten days we went back there and done some work, and lay off three or four days and go back and do a little more work.

Q. Now right there, who was with you, if anybody,

(Testimony of Charles J. Carr.)

when you were making this location in putting up these monuments?

A. Dave Lewis was with me all the time.

Q. He was assisting you in all that you have testified to here? A. In all that I done, yes, sir.

Q. Now, when, as near as you can locate, did you and he first go back on the claim to do the location work?

A. About eight or ten, maybe twelve days, I could not say what.

Q. Eight or ten or twelve days? A. Yes.

Q. State to the Court what, if anything, you and he did, and where you did it?

A. We done the work right alongside of the location work.

Q. Of what did that work consist?

A. We made a cut of three lengths of the shovel, the shovel measures five feet, and that made fifteen feet, and from four and a half to five feet wide.

Q. How deep was that cut at the face?

A. It started in about two feet.

Q. By the face I mean the back end.

A. I thought you meant the start. I was getting mixed up. From seven and a half to eight feet high.

Q. With reference to your height?

A. Well, it was a little over my reach.

Q. A little higher than you could reach? A. Yes.

Q. State to the Court when this work that you have described was completed?

A. Well, I done some work on that claim—

(Testimony of Charles J. Carr.)

Q. No, not as to amount, as to time?

A. I guess we were about from thirty-five to forty days doing it.

Q. From thirty-five to forty days? A. Yes.

Q. From what time? A. From the 26th.

Q. You think then that within thirty-five—

A. Not from the 26th; that was making the location and everything, putting the monuments and everything up from the 26th.

Q. Well, would you say then within forty days after the 26th of August you had completed it?

A. Thirty-five or thirty-eight or forty days, something like that; long before the required time, anyhow; we had ninety days.

Q. Lewis helped you, you and Lewis worked together in this work?

A. Yes, sir, sometimes Lewis would go up there and do some work by himself.

Q. During this time that you refer to, the thirty-five or forty days, that period of time, did you and Lewis work together there?

A. The last day, yes, we completed it together; I measured it off and told him we had lots of work done.

Q. Now after that time, and before the first day of January following, were you upon the ground again?

A. No, sir, I was not on the ground until eleven months afterwards.

Q. What I mean is this: From the time after you and Lewis got through, did you go back onto the claim again?

(Testimony of Charles J. Carr.)

A. I went up there to get tools three or four different times.

Q. Not with reference to doing any work, but going back to the claim itself?

A. Yes, sir, I was on the claim several times afterward.

Q. With whom did you go there, if anybody?

A. I had several people going with me; this Fred Mason was one with me.

Q. Anybody else? A. Martin Caper.

Q. When were you and Caper there together?

A. I could not say just when, it was some time in October, I believe.

Q. October?

A. I know it was before the ninety days expired that I fetched him up there.

Q. What did you go up there for, if you recollect?

A. There was a piece of ground up there, and I went to show him for to take it up; there was a little wedge, at least I thought there was, and I wanted him to take it up.

Q. State whether or not there were any tools up in this cut? A. There was several tools up there.

Q. Did you get them there when Mr. Caper was present?

A. I took some tools, some steel down to lease one, where I got them, where I had the lease.

Q. You took some steel down there? A. Yes, sir.

Q. From this cut?

A. From this cut, yes, sir, there was several pieces up

(Testimony of Charles J. Carr.)

there, I could not say how many, laying around here and there.

Q. At that time were the North Star people on that ground in any shape that you know of?

A. No, sir; there was nobody, not a soul.

Q. Nobody making any claim to it at that time that you know of? A. No, sir, nobody at all.

Q. When you were making this location did you discover the evidence of any attempt to locate it before, any monuments or anything of that sort?

A. No, sir; if there was any monuments up there I would not have touched them.

Q. After you and Mr. Caper left, after you went up there this time that you have just testified to, how long was it before you were on the ground again?

A. I believe that was the last time I was on the ground until May, two years ago.

Q. May, two years ago? A. Yes, sir.

Q. Who was with you then?

A. I was with Mr. Chandler, Mrs. Thompson, Mr. Porter and Dave Lewis.

Q. Do you know whether or not any photographs were taken at that time?

A. Yes, that was the amendment location.

Q. Never mind that; I will get that in the proper time. Do you know of any photographs being taken at that time? A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Who was present?

A. There was myself, Mr. Porter, Mrs. Thompson, Mr. Chandler and Mrs. Chandler.

Q. Anyone else that you recollect?

A. Well, I don't recollect any more.

Q. You don't know whether there was a little boy there or not?

A. And Dave Lewis.

Q. And Dave Lewis was there?

A. Yes, sir.

That is all.

Cross-examination by Mr. METSON.

Q. What is your name?

A. Charles J. Carr.

Q. Is that your correct name?

A. That is my right name, yes, sir.

Q. You say you live there?

A. Berkeley, California.

Q. Near Berriman Station, I understood you to say?

A. Berriman Station, Berkeley, California.

Q. You lived in Randsburg, did you not?

A. I did.

Q. When?

A. Let me see, it was in 1888 and 1889.

Q. 1889?

A. 1888 and 1889, yes, sir.

Q. That was before Randsburg was discovered, was it not?

A. Well, I guess I got it wrong; it was two years and a half before I went to Tonopah.

The COURT.—That would make it 1898.

A. 1898 I should say, I got it mixed up.

(Testimony of Charles J. Carr.)

Q. You went from Randsburg where?

A. Went prospecting.

Q. Where?

A. Went down to Arizona, around through back over the Mojave Desert, through White Mountains, and from White Mountains went to Silver Peak, and from Silver Peak on into Tonopah.

Q. And in 1899 you were in the State of Nevada, were you? A. 1899, yes, sir.

Q. You were in the State of Nevada? A. Yes, sir.

Q. And you were in Esmeralda during all of 1899?

A. No, I was in White Mountains, that is in California.

Q. Which part of White Mountains were you?

A. Above Big Pine.

Q. Then you were in Inyo County?

A. I was in Inyo County.

Q. When did you go over into Silver Peak?

A. We got there in about 1900.

Q. What time? A. About June.

Q. June, 1900, to Silver Peak? A. Yes, sir.

Q. And when did you leave Tonopah?

A. When did I leave Tonopah?

Q. Yes?

A. The first time I left about twelve or thirteen months after I went in there.

Q. Do you remember the month? A. No, I do not.

Q. Do you remember the circumstances?

A. I do, yes.

(Testimony of Charles J. Carr.)

Q. You know you left and you cannot tell the month?

A. I know the circumstances, that I went and got \$200 off of Brougher, because Mr. Oddie wasn't there; there was a couple of thousand dollars in the office of mine, and I got a couple of hundred dollars off of Brougher and went to San Francisco.

Q. Do you remember when that was, the month?

A. I think it was in June, if I ain't mistaken.

Q. In June of 1901? A. 1901.

Q. Or 1902, now which is it? A. 1901, I believe.

Q. You want to pay attention to the questions. You mean 1901? A. Yes, 1901.

Q. Are you sure about that?

A. I am pretty certain.

Q. You located this claim August 26, 1901?

A. Which claim?

Q. That you testified that you located in August, 1901?

A. Yes.

Q. You didn't leave Tonopah before that, did you?

A. Oh, yes.

Q. And came back to locate it? A. Yes, sir.

Q. Then I am mistaken, I thought you misunderstood me? A. No.

Q. And you went to San Francisco before you made the location? A. Yes.

Q. And then you returned to Tonopah?

A. I returned in three weeks.

Q. In June, 1901, then? A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. And then what did you do after you returned to Tonopah? A. I went to work on lease one.

Q. You say you sold lease one?

A. I say I went to work on lease one.

Q. I understand that was one of the first leases in the camp, did you say that? A. Yes.

Q. That was on the Burro?

A. It was on a spur of the Burro.

Q. But within the Burro location, was it?

A. Yes, sir.

Q. When did you sell lease one?

A. I sold lease one somewheres in December, I believe.

Q. December of what year?

A. 1902 or 1903, I could not say which.

Q. December, 1902 or 1903, and you cannot say which?

A. I think it is 1903 if I ain't mistaken.

Q. How long did you work lease one?

A. Pretty near six months.

Q. Who was your partner? A. Louie Leidy.

Q. And when you ceased working it you sold it, didn't you?

A. No, sir, I was still working it, when I sold it.

Q. You still worked it after selling it?

A. No, I sold it after; I was working it and then I sold it.

Q. Well, you didn't work in it for anybody else nor work the lease yourself after you sold it, that is what I am getting at? A. No, sir, I did not.

(Testimony of Charles J. Carr.)

Q. And you obtained that lease on the spur of the Burro on what date, now be clear about that?

A. Now I could not tell you that; it was in 1900 when I got it, it was pretty near the end of the year.

Q. Let us see how this figures out, I don't want to be unfair with you. You say you got the lease in 1900, and you think you sold it in December, 1903, and kept it six months. Get your dates right, we don't want any mistakes about dates.

A. This must have been 1902.

Mr. GOODWIN.—Just understand the question, Mr. Carr, before you attempt to answer.

A. I have no recollection of dates, never kept no dates or years or anything else.

Q. Did you ever have any other leases there?

A. Yes, I had one.

Q. What other one did you have?

A. Gold Mountain, at Gold Hill.

Q. When did you have that lease?

A. I bought that off of Clifford brothers, John Clifford.

Q. When did you have that lease?

A. I could not tell the month I bought that in.

Q. You could not tell? A. No.

Q. Can you tell us what year?

A. 1902, I believe, if I ain't mistaken.

Q. 1902. How long did you have it?

A. I had to throw it up, ran in debt on it.

(Testimony of Charles J. Carr.)

Q. When did you throw it up?

A. Threw it up about six or seven weeks after.

Q. Now, as a matter of fact, didn't you go directly in June of 1900, from Silver Peak over to Tonopah?

A. In June?

Q. Of 1900? A. Of 1900; yes, sir.

Q. As soon as you got to Tonopah you found Mr. Butler you say there, and Mr. Brougher and Mr. Oddie and Mrs. Butler, am I correct about that?

A. You are correct.

Q. Was there anybody else there except Mr. Leidy, who was with you, and those gentlemen I have named, and the Clifford boys, is that right?

A. That is about right.

Q. I am giving it to you right now? A. Yes.

Q. Then you say that you became acquainted with Mr. Butler and with the Cliffords, is that correct?

A. That is correct.

Q. Did you do any work for Mr. Butler at that time?

A. I did; not right away, but a couple of weeks afterwards.

Q. Did you take a lease right away from Mr. Butler?

A. Not until about a month or so afterwards.

Q. About a month or so after you went there?

A. Yes, sir.

Q. Now, Mr. Leidy and you took that lease?

A. Yes, sir.

Q. And you worked it six months?

A. About six months.

(Testimony of Charles J. Carr.)

Q. Didn't you and Leidy sell out that lease in December, 1900? A. In 1900?

Q. Yes? A. I guess you are right about that.

Q. I am right about that? A. Yes.

Q. You took a lease from the Clifford boys on Gold Hill in 1900 some time, didn't you?

A. Yes, while the leases was going on.

Q. While lease number one on the Burro was going on? A. Yes.

Q. Why did you tell the Court that in 1901 you took steel out of this cut and carried it down to your lease with this man Caper?

A. So I did, I borrowed it for up there, and it belonged to the lease, this steel.

Q. In other words, you had closed out your lease in 1900, in December, and you had done work subsequent to August 26, 1901, on this mine, and you took this witness there, Martin Caper, and took the steel out of this hole that you claimed you dug, and carried back to this lease which you sold in December, before?

A. Yes.

Q. And this gentleman, Mr. Caper, went along there, to be a witness, did he? A. No, sir.

Q. Is Mr. Caper here now? A. Yes, sir.

Q. He is here in the courtroom, isn't he?

A. Yes.

Q. And he saw you carry this steel you gathered up in this hole and carry it down to the Burro lease? —

A. Yes.

(Testimony of Charles J. Carr.)

Q. And who owned the Burro lease at that time?

A. Henry Cutting and Billy Foster.

Q. And you delivered the steel to Cutting or to some agent of his? A. Foster.

Q. You delivered it to Foster, personally?

A. No, threw it there and told him the steel was there.

Q. Who was there when you threw it there?

A. I could not tell you.

Q. Wasn't there some one else there when you made this delivery back?

A. I don't know, there might have been a man, I could not say.

Q. Did Mr. Caper help to carry the steel back?

A. No, there was only a little and I packed it myself.

Q. How much was there?

A. Oh, three or four bars.

Q. How long?

A. Some two feet and the longest piece was three feet long.

Q. Did you report that to Cutting and Foster, that you had returned this steel? A. I believe I did.

Q. To whom did you report it?

A. To Foster if anybody.

Q. Don't you know whether or not you told Foster, isn't your memory clear one way or the other?

A. No, I do not, I don't remember that; it was customary for us to borrow steel.

Q. Not customarily, but what did you do at this time?

(Testimony of Charles J. Carr.)

A. I laid it alongside of the forge there.

Q. Did you report it? A. I guess I did.

Q. Have you any memory at all of reporting it to Foster? A. Well, no, I have not.

Q. Have you any memory of reporting it to Cutting?

A. I have not, no, sir.

Q. Have you any recollection of reporting it to anybody?

A. Whoever was up there, I told them there was the steel, and threw it there, one of the workmen, one of the miners.

Q. There was a miner there when you and Caper came down the mountain?

A. There was somebody there working at the forge, sharpening tools.

Q. And you threw down the steel and told him "There is that steel"? A. I guess that is it, yes.

Q. That was in what month, please?

A. In October.

Q. And you have no recollection of who the man was at the forge sharpening tools?

A. I have not, no, sir.

Q. You have no memory about that at all?

A. No, sir.

Q. Could you describe him?

A. No, sir, I could not.

Q. And you don't know whether you knew the man?

A. Didn't know him the chances are.

Q. That you did or did not?

(Testimony of Charles J. Carr.)

A. Yes, the chances are I didn't know him.

Q. That you didn't know him? A. Yes.

Q. Tell us the exact words that you said when you threw down the steel to that man?

A. I says, "There is the steel," I says, "Tell Foster there is the steel," that is what I remember now.

Q. And that is all that was said? A. Yes.

Q. No names mentioned or anything of that kind?

A. "Tell Foster" or Cutting, I could not say which, "I have had it"; it was Foster, I believe I said Foster, if I ain't mistaken.

Q. You have stated all of it, every word that you said at that time to this man? A. That is all I said.

Q. Now, did Caper say anything?

A. No, he didn't; I believe he went ahead on down town.

Q. He didn't see this steel redelivered?

A. I could not say whether he did or not, I could not say whether he still was with me or not.

Q. You say you left Tonopah after that and stayed away twelve or thirteen months?

A. I never said no such thing; I said that I stayed away about—I went away, could not say what month it was when I went away, but I came back in time to do my assessment work on the claim, that was in May, 1902.

Q. You came back in time to do your assessment work on what claim in 1902?—

A. The Lewis Hope Claim.

(Testimony of Charles J. Carr.)

Q. And then how long in 1902 in May, did you remain in Tonopah?

A. In May, I stopped there ten or twelve days.

Q. Ten or twelve days? A. Yes.

Q. Then where did you go?

A. To San Francisco.

Q. Did you go back to Tonopah again?

A. Yes, sir.

Q. When? A. A year afterwards.

Q. In 1903? A. 1903.

Q. Did you go upon this claim?

A. I went close by it, not right on it.

Q. Now, I think that you said you were several days, or two days, putting up monuments? A. Yes, sir.

Q. Was anybody with you when you were putting up monuments? A. Dave Lewis, my partner.

Q. All the time? A. All the time.

Q. How many days did you and Lewis work there in 1901, in August, putting up monuments?

A. We worked two days putting up monuments, and a day putting up notice and scantlings.

Q. Now, what kind of monuments did you build?

A. I built them out of rock, sagebrush and sand.

Q. Did you find any sagebrush up there on the mountain? A. Plenty of it, yes.

Q. Plenty of it there, was there? A. Yes, sir.

Q. And you incorporated sagebrush into each one of the monuments that you built up there did you?

A. I did, yes.

(Testimony of Charles J. Carr.)

Q. About what proportion of sagebrush and rock would you have in those monuments?

A. Well, whatever we could get; had to pack the rock some places; sand and rock all sizes, sometimes we would get a big rock, and sometimes have to take small ones.

Q. Was there half rock and half sagebrush, or what proportion? A. Anything we could get.

Q. But you did have sagebrush in all the monuments, and considerable of it?

A. Some places we had good rocks and would not take any sagebrush.

Q. I thought you said there was sagebrush in all?

A. In some of them, not in all.

Q. On that mountain where you claim these mountains are there is no sagebrush, is there?

A. Don't you bet there is no sagebrush, for the side of the mountain is full of sagebrush.

Q. You will say that, will you?

A. I will say that, yes, sir.

Q. You put sagebrush into the upper monuments, is that your claim now? A. Yes.

Q. How high did you build these monuments?

A. I built them three feet.

Q. Is that all?

A. Four feet wide at the bottom and three feet high.

Q. Is that all? A. That is all.

Q. Were they square up and down, or slope from the base to the summit? A. Sloped from the base up.

(Testimony of Charles J. Carr.)

Q. In August, 1901, you put up how many of those monuments? A. Nine monuments.

Q. Now, you say that the monument at the center of the southern end line was near a Mizpah monument, is that correct? A. Yes, sir.

Q. And you say the Mizpah monument was the only one in that neighborhood?

A. That was all at the time, yes, sir.

Q. Was there a triangle monument in there?

A. No, sir.

Q. Was there a silver top monument in there?

A. That was away down below that.

Q. What was away down below?

A. Below our lines.

Q. What was? A. The silver top lines.

Q. The silver top monument was away below the end line, is that what you mean? A. Yes.

Q. What Mizpah monument was there near your south end center?

A. The Mizpah end line, the center end line, I believe.

Q. The Mizpah center end line? A. Yes.

Q. And that was the only monument that was there?

A. All I seen, yes, sir.

Q. Did you put up these monuments the same as Jim Butler had put up the monuments on the others?

A. Just the same exactly.

Q. You learned from Jim Butler how to put them up?

A. No, sir, I learned long before I seen Jim Butler.

(Testimony of Charles J. Carr.)

Q. I thought you said you had seen Butler put up the monuments, and you marked them the same way?

A. Yes, sir, I did.

Q. Therefore, you know how?

A. I never put any monuments up for Butler, but did the location work for Jim Butler; I done the location work for him, didn't put any monuments up; all the monuments was up long before I went there.

Q. Describe this monument on the end of the Mizpah that you say was the south end center of this location?

A. Built of sand and rock and a post in the center.

Q. What mark was on it, if any?

A. What mark was on it?

Q. Yes? A. I could not exactly tell you.

Q. Can you tell the size of the post?

A. Yes, it was 4 by 4.

Q. And you don't remember whether there were any marks on the post or not?

A. There was marks on it, but I forget.

Q. And you cannot tell any of the marks?

A. Not exactly.

Q. Can you tell any of them?

A. I could if I seen them; I could not swear what was on them now since I have been there, my recollection would not allow me to say.

Q. Mr. GOODWIN.—Are you referring to the Mizpah corner, Mr. Metson, or to the stake that he put there on the south?

(Testimony of Charles J. Carr.)

Mr. METSON.—I am referring to the monument which this witness testified that he saw at the end line of his claim.

Q. Now, you say this first discovery monument that you have described to the Court was about 40 feet north of where the main working shaft of the North Star tunnel is now? A. Forty or forty-five feet.

Q. Did you measure it? A. No, sir.

Q. How do you estimate it?

A. Well, just took a look at it, and imagined it was about that far.

Q. When did you take this last look at it?

A. Last July, a year ago this month.

Q. In July, 1903? A. Yes, sir.

Q. That is the last time you looked at it?

A. Yes.

Q. Did you go up to this hole of yours at that time?

A. Went close, didn't go up to it.

Q. How far did you go to it? A. About 300 feet.

Q. Within 300 feet of it? A. Yes.

Q. And from the hole which you claim you put there it is about 40 feet south to the main working shaft of the North Star now?

A. I didn't say south; I said north.

Q. I say from the hole that you claim you put there, the main shaft of the North Star was about 40 feet south? A. Yes, about that.

Q. That is correct?

A. Forty or forty-five feet.

Q. Not to exceed fifty in any event?

(Testimony of Charles J. Carr.)

A. I could not say, it might be more or less.

Mr. GOODWIN.—He says not to exceed fifty.

A. Well, I didn't measure it; I thought it was about forty or forty-five feet.

Q. When you last saw this North Star shaft was the gallows frame up? A. There was a big dump on it.

Q. Was the gallows frame up when you were there?

A. Yes.

Q. Was there anything over this hole that you claim to have dug? A. The hole I claim to have dug?

Q. Yes?

A. Could not say, wasn't close enough to see.

Q. Now, what kind of scantling did you use for stakes? A. Oh, the common scantling.

Q. What was the size? A. Three by four.

Q. Three by four? A. Yes, sir.

Q. In everyone of these corners?

A. Yes, sir.

Q. And about how long?

A. About two and one-half or three feet long.

Q. Two and one-half to three feet?

A. Yes.

Q. How far would the scantling project above the tops of these monuments?

A. Seven or eight inches?

Q. Did you put any mark on these scantling?

A. Yes, I marked them all; just shaved them off and wrote on them describing each corner, what they were, the same as I put on the can, but not so much; if it was

(Testimony of Charles J. Carr.)

on the northeast corner, I would put the northeast corner.

Q. Is that all the marks you put on the scantling?

A. Yes, sir.

Q. Did you mark each one of the scantling?

A. Just the same way, yes, sir.

Q. Just the same way? A. Yes.

Q. And all that you put on the scantling was northeast corner, southeast corner, northwest corner?

A. Yes, sir, and so on.

Q. And southwest corner? A. Yes.

Q. You have been a sailor, have you? A. No, sir.

Q. You said sou'west?

A. I said southeast corner.

Q. Did you not put the name of the claim upon the scantling?

A. No, I did not, because the location and name was in the can, it wasn't necessary.

Q. What can was the name of the location in?

A. In just as I told you, when I put the notice in the can, I put just describing each corner, and everything told on the paper what it was.

Q. Well, you put a can in each monument too?

A. In each monument, yes, sir.

Q. What kind of a can?

A. An oyster can, the only kind we could get.

Q. How many cans did you use for the whole location? A. Nine cans.

(Testimony of Charles J. Carr.)

Q. Now, you say that you put a location notice in the discovery monument? A. Yes, sir.

Q. Did you put it on paper, what was put on the other monuments in the can?

A. No, sir, we put the location papers on the location, the claim.

Q. Did you put any paper in these other cans, excluding the location monument, outside of the location monument, did you put any paper in the cans in the rest of the monuments?

A. I certainly did in every one of the cans.

Q. Tell us what you wrote on the paper placed in each can at the monument that you designated number two on the plat?

A. Number 2, that was the northeast corner.

Q. The northeast corner? A. Yes, sir.

Q. And I understood you to say that was the first place that you went to after putting up the discovery monument? A. Yes, sir, I believe it was.

Q. Did you put the name of the claim in that can, at your northeast corner? A. Which name?

Q. Of any claim, did you write it?

A. I just put the northeast corner on it.

Q. Just put in the can a piece of paper which had inscribed on it the northeast corner?

A. Northeast corner.

Q. When you got to the place you marked number 4 on that plat, what did you put in the can that you placed there, if anything?

(Testimony of Charles J. Carr.)

A. I put that on the east center, put it in the can.

Q. East center, that would be the east center side line?

A. East center side line, that was what it was.

Q. Did you put side line? A. I believe I did.

Q. And that was all, east center side line?

A. East center side line; yes, sir.

Q. What did you put at the point where you have marked "6" on that plat?

A. I put, that is the south end line.

Q. South end line? A. Yes, sir.

Q. And that is all? A. That is all.

Q. Just those three words, "south end line"?

A. Yes, sir.

Q. What did you put at the point marked "9" on the diagram?

A. I put that on the north center line.

Q. North center line?

A. North end line, end center line.

Q. Give it correctly again?

A. North center line.

Q. And that was all that was in that can?

A. Yes, sir.

Q. When were those cans placed in the monument?

A. Five days after we located.

Q. You made this location in the daytime, did you?

A. Yes, sir.

Q. All the work was done in the daytime?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Did you see anybody when you were putting up these various monuments? A. Lots of them.

Q. Whom did you see there while you were making the location?

A. Not around on the ground, I saw them around town.

Q. Can you remember any one that you saw?

A. Not on the ground, nobody on the ground only Dave Lewis.

Q. Dave Lewis was the only man there after you came there near enough to speak to?

A. Yes, sir; he was the only man there.

Q. And it took you two whole days, yourself and Lewis to put up the monuments?

A. To put up the rock monuments, yes, sir.

Q. After you got the monuments built there, there were no notices at all, or marks on the monuments, or in them, were there?

A. No, not after we put the rock monuments up, there wasn't.

Q. After you completed the monuments what did you do, so far as building them with rock or material?

A. After we built the rock?

Q. Yes, did you finish it in the evening or afternoon?

A. In the evening.

Q. The next day after you built up those monuments, what did you do, if anything?

A. The next day?

Q. Yes?

(Testimony of Charles J. Carr.)

A. Didn't do anything, knocked around town.

Q. What did you do the next day?

A. Knocked around town.

Q. And the next day?

A. Went up and put the cans on there and the notices and the scantlings in the top.

Q. Did you do that all in one day? A. Yes, sir.

Q. Did you disturb the monuments to insert those cans and scantlings?

A. No, not much, a little bit.

Q. Just drove them right down through the center?

A. Had to take the rocks out and place them in with little rocks to make them solid.

Q. Where did you get the scantling from?

A. I believe from Lothrop & Davis.

Q. Who carried them up the hill? A. I did.

Q. How many trips did you make?

A. Made three trips.

Q. From Lothrop & Davis' store up on the hill?

A. Yes, sir.

Q. Did you buy them at Lothrop & Davis' store?

A. I had an account with Lothrop & Davis.

Q. You had an account with them at the time?

A. Yes.

Q. And they were charged to your account?

A. Yes, sir.

Q. Now, after you put up the scantling in these monuments what else, if anything, did you do?

(Testimony of Charles J. Carr.)

A. Well, we didn't do much for eight or ten or twelve days, and then we went up and done the work on it, started in to do the work.

Q. You didn't do much of anything from eight to ten or twelve days, and then some work was done?

A. Then we went up and started in to do the work.

Q. Now who went up? A. Dave Lewis and I.

Q. Anyone else? A. No, sir.

Q. What work was done?

A. Well, we started in to do the location work.

Q. Well, with pick and shovel, sledge, steel, or what?

A. Pick and shovel, a few places there we had to put a shot in, here and there.

Q. And this cut you speak of, what was done by him? A. By Dave Lewis and myself?

Q. Entirely?

A. Well, Dave Lewis, and I didn't go up there one day, and I give Dave Lewis \$3.00 and he fetched up a boy, him and the boy went up there to work in my place, and I don't know who the boy was.

Q. But all the work except this one day, you were present with Lewis? A. Yes.

Q. And you used to go up in the morning together and come down together?

A. No, sir, sometimes would not go up until afternoon, and do a couple of hours work, or an hour's work.

Q. And you don't remember who this boy was?

A. No, I do not.

Q. Were you working this lease at the same time?

(Testimony of Charles J. Carr.)

A. No, sir.

Q. Now this cut that you say that you made there with Dave Lewis, where was that with reference to your location monument? A. Right alongside of it.

Q. Was the location monument not on this ledge that you speak about? A. It was, yes, sir.

Q. Didn't you run this cut on the ledge, or run the cut to one side of the ledge?

A. It runs right across the ledge?

Q. It was a crosscut then? A. Yes, sir.

Q. How was that vein that you speak of dipping?

A. How was the ledge dipping?

Q. Yes?

A. I believe it was dipping to the east, if anything.

Q. It dipped to the east?

A. Dipped just a little bit to the east.

Q. About what angle, was it pretty straight up and down? A. Yes, it was pretty straight.

Q. Pretty near perpendicular was it?

A. Pretty near perpendicular.

Q. And dipped a litte to the east, if anything?

A. Just a little to the east, from the east a little.

Q. And you made a cut in there, a crosscut, which you say was the length of two shovels and a half, wasn't that it? A. Three shovels.

Q. I am mistaken about that?

The COURT.—Yes, he said three shovels of five feet.

A. Three shovels and five feet in a shovel.

(Testimony of Charles J. Carr.)

Q. About fifteen feet? A. Yes, sir.

Q. Was your cut begun above or below your location monument? A. Right alongside of it.

Q. Well, it must have been above or below on the hill? A. The monument was on the top side of it.

Q. The monument was up the hill from the cut?

A. Yes, sir.

Q. And I suppose the outside face of the cut was right where the ledge showed on the surface, was it?

A. No, sir, it was quite a ways, it was six or seven feet from there; we had to start it from the bottom of the hill, and start in about two feet, as we went in it got deeper and deeper, and the vein of the ledge was about half way through as we went through the cut, about seven or seven and a half feet, about half way, I should judge, of the cut.

Q. You made some dump in making this cut?

A. Yes.

Q. And you could see that dump going up the hill from town, couldn't you?

A. Could see it from the town.

Q. The dump showed from the town? A. Yes.

Q. Quite plainly showed from town, anybody down town could see it, could they not?

A. Yes, anybody could see it.

Q. Did I ask the name of the boy that went up there in your place? A. I don't know the boy.

Q. Did you see the boy? A. Yes.

Q. Please describe him to us?

(Testimony of Charles J. Carr.)

A. A boy about sixteen years old.

Q. And he worked up there one day with Lewis?

A. One day.

Q. And you allowed Lewis \$3.00 for it?

A. I gave Lewis \$3.00 to give him.

Q. Was the boy dark or light complected?

A. I could not say, I believe light, if I am not mistaken.

Q. You don't know where he lived?

A. In Tonopah, must have lived there.

Q. You don't know any of his friends and could not place him by name now?

A. No, I could not. I didn't pay no attention to him at that time is why.

Q. Now as to the ledge; the ledge cropped you say for about a thousand feet?

A. Traced it for a thousand feet.

Q. Well, how far could you trace it above on the hill, above your location monument?

A. Very little.

Q. Very little above your location monument?

A. Yes, sir.

Q. About how far? A. About a hundred feet.

Q. About a hundred feet? A. Yes.

Q. And it cropped right where your location monument was? A. Yes.

Q. How far out of the ground did it crop?

A. Cropped way down past the Mizpah ledge into the Valley View ledge.

(Testimony of Charles J. Carr.)

Q. How far above the surface was the cropping?

A. Sometimes you could not find it, have to dig the dirt to trace it.

Q. Did you trace it with the shovel going along the thousand feet?

A. No, just kicked it off with my foot.

Q. You had good boots? A. Yes.

Q. Did it crop at all above the surface?

A. A little bit, yes; some places it cropped out from the dirt, and some places it would be buried.

Q. I understood you to say in your direct examination that it cropped all along or a thousand feet?

A. It would be buried and crop up again; I said you could trace it for a thousand feet.

Q. It was harder and more substantial rock than the country rock? A. The same character of rock.

Q. The same character of rock as the country rock?

A. Yes sir.

Q. And the country rock is riolite?

A. Riolite with porphyry.

Q. You call it porphyry? A. Porphyry.

Q. Oddie Mountain? A. Oddie Mountain.

Q. You are talking of Oddie Mountain all this time?

A. Yes.

Q. I thought the top of that mountain was riolite and that the porphyry came under that capping?

A. Riolite is porphyry.

Q. That is the way you designate it, is it?

A. Yes.

(Testimony of Charles J. Carr.)

Q. There are two classes of porphyry there?

A. Yes.

Q. What do you designate as the lower porphyry, the ledge country rock porphyry there?

A. There is what they call granite porphyry.

Q. Lava porphyry is a deeper porphyry?

A. Yes.

Q. Is that what you mean? A. Yes.

Q. The one that is capped over is the lava porphyry?

A. Yes.

Q. And what do you call the Oddie mountain, the main mountain?

A. Oddie mountain is a porphyry all by itself, there ain't any other character in it of any porphyry.

Q. What was the highest place above the surface that this ledge cropped, two or three, or four or five feet? A. No.

Q. About how much, give us some idea in feet?

A. Two or three inches.

Q. And how often in that thousand feet would it crop, every twenty-five feet?

A. Oh, yes, about every twelve or fifteen feet.

Q. Every twelve or fifteen feet it would crop?

A. Yes, you could trace it right along by knocking a little dust off.

Q. I mean above the surface where you would not have to scrape off the dust, it would crop every twelve or fifteen feet?

(Testimony of Charles J. Carr.)

A. No, I could not say that; some places it would not crop for twenty or twenty-five feet.

Q. Every twelve feet it would crop, and then every twenty-five or thirty feet?

A. Chances are, yes, something like that.

Q. And it would show mineral all the way?

A. Yes.

Q. And you assayed it, had five assays made?

A. Yes, had five assays made.

Recess until 1:30 P. M.

After Recess.

It is admitted by defendant that the plaintiffs are citizens of the State of California.

It is also admitted that there are no local rules and regulations in the district in which the land in controversy is situated in addition to the requirements of the Congressional Act.

Cross-examination of CHARLES J. CARR (Resumed).

Q. Mr. Carr, will you please mark upon that diagram a point indicating the Mizpah monument that you say was there when you placed those monuments in position? A. How the ledge run, you mean?

Q. Where that Mizpah location monument was that you say was there?

A. It was about right here. (Marks point with figure "10".)

Q. Then that is about due north of the southeast

(Testimony of Charles J. Carr.)

corner of the location you claim as the Lewis Hope location?

A. No, it is southwest, more west.

Q. I say referring to the point 5, which you say is the southeast corner of the Dave Lewis Hope?

A. The southeast corner.

Q. Now, what is the direction from that point 5, the southeast corner of the Dave Lewis Hope?

A. This is the southwest corner.

The COURT.—That is the southeast corner the way you have it there.

A. Yes, that is right. Now, what do you say, Mr. Metson?

Q. Now, have you that number 10 there, knowing that as the southeast corner? A. I think so, yes.

Q. What direction is that Mizpah monument, number 10, from number 5, on that diagram?

A. Well, it is south—no, instead of there, it is west.

The COURT.—Number 5 is at the southeast corner?

A. Yes.

The COURT.—He wants to know what direction that southeast corner post was, and about how far.

A. It was south of this corner.

Q. South of 5? A. Yes.

Q. How far south, in feet?

A. That I could not say.

Q. Approximately?

A. Well, twenty-five or thirty feet, I guess.

(Testimony of Charles J. Carr.)

Q. Describe that point number 10 which you have changed from where you had it first, describe the monument. A. The monument was here.

Q. The Mizpah monument?

A. Well, about here. (Below figure 10.)

Q. Of what was the Mizpah monument constructed in August of 1901; just state to the Court of what it was built, and the size of it, and all about it, as it appeared in August, 1901?

A. It was built of rock and 4 by 4 scantling was put in it with marks on each corner, and the directions.

Q. How high was the monument?

A. From three and a half feet high to four feet at the bottom.

Q. Can you remember any of the marks on the scantling?

A. I know there were marks, but I don't remember of ever reading them.

Q. Now when did you get through this work in this cut that you say you made there on the Dave Lewis Hope locations? A. When did I get through?

Q. Yes? A. Some time in September.

Q. Some time in December? A. September.

Q. After getting through the work in September of 1901 in that cut when did you next go on the ground?

A. When did I next go on the ground?

Q. Yes? In October some time.

Q. October? A. Yes.

(Testimony of Charles J. Carr.)

Q. 1901? Who went with you, anybody?

A. Yes, sir; Mr. Caper went with me.

Q. Who was Mr. Caper?

A. He is a miner and prospector.

Q. Then a resident in Tonopah?

A. He was, yes.

Q. And mining there at that time? A. Yes, sir.

Q. Doing anything else?

A. That is all, he done a little prospecting with me, and he done a little before that.

Q. How many times did he go on the ground with you? A. Once.

Q. And that was in October, 1901? A. Yes.

Q. Did you meet anybody on the trip that day?

A. Not as I remember, I might have met several on the Mizpah ledge, working around there.

Q. Did you go clear to the top of the mountain that day?

A. Just went up to the location work, that was all.

Q. You didn't go above that? A. No.

Q. After that visit with Caper, when did you next go upon the ground?

A. I don't remember of going on the ground till the following May.

Q. Until May, 1902? A. 1902, yes, sir.

Q. And then who went with you, anybody?

A. Yes, sir; there was Mrs. Thompson, Mr. Chandler and his wife, and Mr. Porter and Dave Lewis.

Q. And had you been away from September?

(Testimony of Charles J. Carr.)

A. Yes, sir.

Mr. GOODWIN.—Notice the questions.

Q. Where? A. San Francisco.

Q. Had you been away from September or October, from Tonopah?

A. Why, yes, I was over to Silver Peak several times, and Sodaville several times, in and out.

Q. Had you been away any long trip any place?

A. No.

Q. Where were you in December, 1901?

A. I believe I was in San Francisco.

Q. How long did you stay in San Francisco, the whole month?

A. December, no; I stayed there above five months.

Q. About five weeks? A. Five months.

Q. Then you were in San Francisco December, January, February, March and April, and you went back in May, is that right? A. Yes, sir.

Q. What was the longest time that you spent at Silver Peak after August of 1901?

A. Seven and eight days.

Q. How many trips did you make there?

A. Made several, ten or twelve trips.

Q. Ten or twelve trips? A. Yes, sir.

Q. And would you be off seven or eight days each trip? A. Oh, no; sometimes I would go over there and come back in a day or two.

Q. How far is it over to Silver Peak from Tonopah?

(Testimony of Charles J. Carr.)

A. Thirty-seven miles.

Q. How many trips did you make to Sodaville from August?

A. From August to October?

Q. Yes.

A. I believe I made one, if I ain't mistaken.

Q. Were you in Sodaville in September?

A. Yes, I was there in Sodaville.

Q. Where did you stop, at Bob Stuart's?

A. At Bob Stuart's.

Q. How long were you at Sodaville on that trip?

A. About ten days, I guess.

Q. Were you at Silver Peak in September, 1901?

A. No, I was not; I wasn't in there at all in September—well, yes, I was in September in Silver Peak; I went over to get some prospecting stuff over there.

Q. Were you prospecting or stopping somewheres?

A. I was prospecting.

Q. How long were you on that trip?

A. I could not say, a day or two.

Q. About how long?

A. As long as I went over there and got what stuff I wanted and came back again, three days.

Q. In September of 1901, did you make any trip to Belmont?

A. No; the only trip I went to Belmont was the 16th of May, I remember it well.

Mr. GOODWIN.—The next year, 1902?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. You deeded away your interest in that claim, didn't you? A. Yes, sir.

Mr. GOODWIN.—That is incompetent if this is for the purpose of showing a transfer, and is not cross-examination.

The COURT.—It would be competent for fixing the date.

Q. Now, with reference to making any deed of that property, can you tell when you actually did, or the exact date that you left Tonopah?

A. No, sir, I could not.

Q. When you left Tonopah to go to San Francisco, do you remember anybody going with you?

A. The first time I went to San Francisco?

Q. After the location, the first time you went to San Francisco after the location of this Dave Lewis Hope claim.

A. There was nobody ever went with me to San Francisco.

Q. Did you go on the stage from Tonopah to Soda-ville? A. Yes, sir.

Q. In September of 1901, were you at Candelaria or Sodaville?

A. In September or January, did you say?

Q. September of 1901?

A. No, it was away later than that that I was there.

Q. It was later? A. Yes, sir.

Q. When did you first meet Mr. Caper?

(Testimony of Charles J. Carr.)

A. I met him when he first came into the camp.

Q. When was that?

A. Oh, three or four months—let me see, that was about June, I believe; he came in there, in 1901.

Q. Who is Fred Mason?

A. Fred Mason was the foreman of the Fraction mine there, superintendent at least.

Q. Did you go on any of these trips with Mr. Caper?

A. Two trips.

Q. Two trips with him? A. Yes.

Q. What trips were those?

A. Silver Peak, and went over to Lone Mountain to look at a ledge over there.

Q. When was that?

A. That was in September, I believe; no, it was in January.

Q. Of 1902? A. Yes, sir.

Q. Did he go on the stage with you when you left Tonopah to go to San Francisco? A. No, sir.

Q. Was he in Tonopah when you left?

A. He was in Silver Peak when I left.

Q. The trip to Cold Mountain you say was made with Mr. Caper? A. To Lone Mountain.

Q. How many went? A. Three of us.

Q. Who was the other man?

A. Mahoney his name was.

Q. How long did you stay on that trip?

A. About six days, I believe.

(Testimony of Charles J. Carr.)

Q. Didn't you tell me a little while ago that you left and went to San Francisco in December of 1901, and stayed away until May?

A. Well, I went away in December, but I don't know what day in the month it was.

Q. How could you have gone from Tonopah to Lone Mountain with Mr. Caper in January if you left and went to San Francisco in December; that is the only thing bothering me; can you explain that?

A. I got the months mixed up; I cannot recollect the day of the months or the day of the weeks.

Q. I cannot straighten them out, and I wish you would help us on that. You said you left in December of 1901 and went to San Francisco and stayed there until May, and then you went back to Tonopah?

A. What time I left for San Francisco I could not tell you the month or day of the month, or anything else; I remember going away and staying four or five months and coming back in the month of May to do my assessment work; that is all I remember; I don't remember the month I left Tonopah, to tell the truth about it.

Q. That is what you are trying to tell me, the whole truth? A. That is what I am trying to tell.

Q. Had you gone on this trip with Mr. Caper before you went to San Francisco, or afterward?

A. Before I went to San Francisco.

Q. Before you went to San Francisco?

A. Yes, sir.

(Testimony of Charles J. Carr.)

Q. Do you still say this trip to Lone Mountain with Caper was made in January, 1902?

A. I think it was, yes.

Q. And when you went to San Francisco you stayed how many months?

A. I stayed three or four or five months; I can remember coming back in May; went back in May, about the 15th of the month.

Redirect Examination.

Q. This cut that you testified to having made there when you located, or shortly after you located the claim, could the dump of that cut be seen from the town?

A. Yes, sir, very plain.

Q. Very plain? A. Yes, sir.

Q. Now, you said something with reference to taking some steel down; when you said steel, what did you mean? A. Well, drills.

Q. You also said that you got those posts that you made your corners from Lothrop & Davis?

A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Did you have an account with them there at the store? A. I did, yes.

Q. Did they sue you on that account?

A. They put an attachment on the claim.

Q. They put an attachment on what claim?

A. On the Dave Lewis Hope claim; they put an attachment on one-half, my half.

Q. They attached that to secure them in what?

(Testimony of Charles J. Carr.)

Mr. METSON.—I suppose the attachment will speak for itself.

Q. For the account that you owed them?

A. Four hundred and eighty dollars, yes, sir.

Q. Did you subsequently pay that off?

A. I did, yes; when I went up there in May, 1902, I paid the debt.

Q. Do you recollect to whom you paid it?

A. Yes, sir.

Q. To whom?

A. I paid it to Jackson, and Jackson gave it to Davis, to Lothrop, I believe it was; it wasn't \$480.00, Jackson had it fixed down for \$380.00.

Q. He got a reduction to \$380.00?

A. He got a reduction to \$380.00.

Q. That is the amount you paid?

A. That is the amount that I paid.

Mr. THOMAS W. CHANDLER, one of the plaintiffs, called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Mr. Chandler, you are one of the plaintiffs here?

A. Yes, sir.

Q. Were you on the ground in dispute in May, 1902?

A. Yes, sir.

Q. Who was there with you?

A. Doctor Porter, Mr. Carr, my wife, David Lewis and Mrs. Thompson.

(Testimony of Thomas W. Chandler.)

Q. Did you go onto the ground, on what was known there as the Dave Lewis Hope claim, or what was understood to be the Dave Lewis Hope claim?

A. I did, yes, sir.

Q. Where did that lay with reference to the town and mountain?

A. It laid on Mount Oddie.

Q. Did it come down the south end of it close to the town? A. One end did, yes, sir.

Q. Well, as it lay there could the surface of this claim be seen readily from the town?

A. The dump could, the dirt there that had been taken out of it could.

Q. You went up to where some work was done, did you? A. I did, yes, sir.

Q. What was the character of that work?

A. Well, it looked to me like a big, and like a square hole.

Q. A square hole run into the side of the mountain?

A. It looked square to me; I am not up in mining. They told me enough work had been done—

The COURT.—Never mind what they told you, just what you saw.

Q. When you were there did you see any attachment papers posted or anything purporting to be an attachment paper posted on the claim?

A. I don't know as I did.

Q. You don't recollect? A. I don't recollect.

(Testimony of Thomas W. Chandler.)

Q. While you were there was any photograph of the side of the mountain in this particular locality taken?

A. Yes, sir.

Q. How were the people stationed in the photograph, if at all? I do not mean now as to the particular locality. Were they all in a bunch or were they scattered in different localities?

Mr. METSON.—Our objection to that is that the photograph is the best evidence, we will make no objection if you produce it.

A. Doctor Porter placed himself at one post, my wife at another, and Mrs. Thompson at another, and Mr. Lewis at another and Mr. Carr at another, and myself at another.

Q. And as you appear in that photograph, if there was a photograph taken, represents your positions at these points does it? A. Yes, sir.

Q. Is that a copy of the photograph that was taken at that time? (Hands photograph to witness.)

A. Yes, sir.

Q. Was Dave Lewis there with you?

A. Yes, sir.

Q. Could you indicate on the picture the point at which Dave Lewis was standing at the time that photograph was taken?

A. Yes, sir. (Indicates on photograph.)

Q. Mark it with the letter "L."

(Witness marks as requested.)

(Testimony of Thomas W. Chandler.)

and could be admissible only on cross-examination, I take it.

The COURT.—I will pursue the same course with it as I have with the others; it will be admitted subject to the objections that may be made.

(Defendant excepts. Exception noted.)

Complainants' Exhibit No. 4.

Hawthorne, November 10, 1902.

Thomas W. Chandler, Esq., San Francisco.

Dear Sir: I am on my way to Tonopah and will refer your letter to the North Star Tunnel Co. In regard to same I will say to you that I consider you bought a gold brick from Chas. Carr, and you are not the only one he gave it to; he gave it to me also. He sold me a lot that he never owned, and we are not the only ones. Dave Lewis located the claim you mention but the assessment work was not done. They let it go, and when Tonopah commenced to look pretty good Lewis sent two men to do the assessment work, I think some time in Feby. We have their affidavits to that effect. But one Ivanpah claim took in all the Dave Lewis claim, which gave us a prior right to any amended location, as there was nothing to amend as Lewis and Carr never done their assessment work. They let it run out. Lewis run a bluff in Feby. to do some and that was the first work that was ever done on the ground on their a/c, that

(Testimony of Thomas W. Chandler.)

part of our matter has always been in the hands of Messrs. Ramsey, Ish and Salisbury, and our attorney has looked into the matter fully, and he tells us that Lewis & Carr has no right in the claim at all. I don't think Carr ever was up on that hill before he come to Tonopah with you, and he can't show where he ever done any assessment work or ever paid for any, and I don't see where you would have a chance in a suit. Mr. Key Pittman is our attorney. You might correspond with him. Now, Mr. Chandler, there are several parties in Tonopah interested in that Co., along with me, and there is not one of them that considers you ever owned any part of that ground, and everybody in Tonopah talked about it the time Carr sold you his interest that he was at his old game. The N. S. Tunnel Co., bought the Ivanpah claim and we will have to protect our interest. I would not have anything to do with it under any consideration unless I considered we were right when we bought it, and I am sure we done everything that the law required since we bought it, with several other claims.

Yours respy.,

FRANK GOLDEN.

Mr. GOODWIN.—It is offered for the purpose of showing an admission on their part as to the location.

Mr. METSON.—I move to strike it out.

The COURT.—I have said I would not pass upon the question at the present time. There are a great many

(Testimony of Thomas W. Chandler.)

questions raised, and when you come to submit the case they are of no importance whatever. You have saved your exception.

(Letter admitted in evidence and marked Complainants' Exhibit No. 4.)

Cross-examination by Mr. METSON.

Q. You say that Lewis was on the ground the day that this photograph was taken? A. Yes, sir.

Q. And you say that he was placed at some particular corner? A. Yes, sir.

Q. Could you designate on that plat made by Mr. Carr what corner Mr. Lewis occupied?

A. About, I think I could.

Q. Please do so.

(Witness goes to blackboard.)

A. I stood here, do you want how everybody stood, or where Lewis stood.

Q. Where Lewis stood?

A. He stood off about here I think, to the best of my knowledge. (Point marked on map "11".)

Q. That is a point midway between the point 3 and the point 8?

A. Yes, sir, I should think so. No, that is wrong, excuse me, I was close to the base here; I stood about here I should judge, and Lewis would be off about here, I took it too high up. (Remarks point on plat.)

Q. Now, you have changed the point 11 to a place north of the point 8.

(Testimony of Thomas W. Chandler.)

A. I think that is about it, sir.

Q. Is that correct?

A. Yes, I could point out on the picture where he stood.

Q. I am asking you on the plat.

A. I think that is about right.

Q. About how far north of the point 8 is the point 11, on the ground?

A. I could not tell you, sir; I have no idea how far.

Q. Could you approximate it?

A. I didn't go over all the points when I was there; I didn't go to all the posts; all I went to was that pole, and where I stood when the picture was taken.

Q. To the pole and where you stood when the picture was taken?

A. That is all, and the position my wife and folks were in the day it was taken.

Q. You didn't go to the places where they were, you took your own stand and stayed there? A. Yes.

Q. And you could not see what the points were where they stood? A. No, sir.

MARTIN CAPER, a witness called and sworn on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Mr. Caper, where do you reside?

A. I live in Nevada for the last five years.

Q. Were you in Tonopah in the year 1901?

(Testimony of Martin Caper.)

A. Yes, sir.

Q. What portion of that year?

A. About in June I came to Tonopah, in about June, 1901.

Q. How long did you stay there?

A. I stayed there a whole year.

Q. The whole year? A. Yes, sir.

Q. Were you acquainted with Charles Carr while you were in Tonopah? A. Yes, sir.

Q. In the fall of 1901 did you hear of Carr and Lewis having a location up there on the mountain?

A. Yes, sir; Carr wanted me to go up there, he thought there was a piece of ground—

Q. Don't say what he said. You heard around town that they had a location up there on the hill, didn't you?

A. Yes.

Q. It was generally understood there that Carr and Lewis had a location up there on the mountain, wasn't it? A. Yes, sir.

Q. Did you go up on the hill there with Carr?

A. Yes, sir, I went up there.

Q. When was it?

A. It was some time in October, I don't know what date it was.

Q. Of what year? A. 1901.

Q. Do you know where the North Star hoisting works are now, the present shaft?

A. Yes, sir; I see it, but I have never been up there.

(Testimony of Martin Caper.)

Q. Where did you go with Mr. Carr on that ground with reference to that shaft, or those hoisting works?

A. Well, I don't know exactly; it is close there, somewhere on the side of the hill.

Q. On the side of the hill close there somewhere?

A. Yes.

Q. What did you see there?

A. I see they had a cut there, and he ask me what I think of his ground there, his claim, I told him it is—

Mr. METSON.—We object to what he told him.

Q. You say you saw a cut there, describe that cut to the Court so he will understand it.

A. There was a cut I think about 15 feet long, and the face was about 10 feet.

Q. The face you mean the front?

A. The front, yes, next to the hill.

Q. How wide was it?

A. About 4 feet to 4½ feet.

Q. In that cut at any point state to the Court whether or not there was any vein exposed?

A. Yes, there was a small ledge, about 6 or 7 inches of ledge he had there, quartz.

Q. Did it show plainly that it was a vein?

A. Yes, it was of quartz.

Q. Did you see any monument or stake around there anywhere?

A. I see the monument a few feet above his cut up there.

(Testimony of Martin Caper.)

Q. That is on the side above the cut, you saw a monument? A. Yes, above, right above his cut.

Q. How close to the cut?

A. Three or four feet, somewhere there.

Q. Was there any notice there at that monument?

A. He had some paper out of the can, and he read it; I was on the cut at that time, and when I went in there I see his name and Lewis, on the paper.

Q. You saw him take the paper out of the can?

A. Yes, sir.

Q. What did he do with that paper?

A. Put it back in the monument again.

Q. Could you see from the town of Tonopah this cut and dump?

A. Yes, sir, I could see from the town.

Q. After you had been up there and gone back to Tonopah, did you ever notice it?

A. Yes, I noticed it from the town.

Q. It could be plainly seen, could it?

A. You could see the dump.

Q. How far was it to the town, approximately, from this cut?

A. Quite a ways, I could not tell exactly how far, it was on the side of the hill, pretty much to the top.

Q. Pretty well towards the top? A. Yes.

Cross-examination by Mr. PITTMAN.

Q. When you came to Tonopah, Mr. Caper, where did you come from? A. Bodie.

Q. What were you doing in Bodie?

(Testimony of Martin Caper.)

A. Working in mining.

Q. What mine? A. Standard mine.

Q. How long did you work in the Standard mine?

A. About a year.

Q. What have you been doing in Nevada?

A. Working, drilling, and working in mines.

Q. As a driller? A. Yes.

Q. When was the first time you met Mr. Carr?

A. Met him in June, in 1901.

Q. Where did you met him?

A. Met him in Tonopah.

Q. Was he mining at the time?

A. He was prospecting.

Q. He was prospecting?

A. Yes, he was prospecting; he told me he was leasing and prospecting.

Q. What was the first job that you did after coming to Tonopah? A. I went to prospecting around.

Q. Where did you prospect?

A. All around Tonopah.

Q. All around Tonopah? A. Yes.

Q. Which direction, north, south, east and west?

A. North, south, east and everywhere.

Q. Did you locate any claims? A. Yes, sir.

Q. What claims did you locate?

A. Claims down west from Tonopah, what Charlie Young has.

Q. Did you do any work on it?

A. I did a little work; I didn't claim it because I

(Testimony of Martin Caper.)

didn't do my location work, and didn't have them recorded, so I lost it.

Q. When did you locate those claims?

A. I located them claims in 1901, I think in the fall.

Q. In the fall of 1901? A. Yes.

Q. How many claims did you locate?

A. I located three.

Q. Did you locate any other claims in the district?

A. Well, I located some on Gold Mountain there with several parties, that is with partners, but I just put the notice on and never done the work on them.

Q. You never did any work on them? A. No.

Q. After you got through prospecting, what did you do?

A. I been working in the mines for wages.

Q. What mine? A. Mizpah ledge.

Q. For whom? A. Mr. Sullivan.

Q. For Sullivan and Lynch? A. Yes.

Q. How long did you work for them?

A. Three months at one time, and another time about two months, and so on.

Q. When did you commence to work for them?

A. I worked for them about in 1901, some time in the fall.

Q. Was it before or after you went up the hill with Mr. Carr? A. I was working at that time.

Q. Where were you working?

A. In the Mizpah ledge.

Q. At the time you went up there? A. Yes, sir.

(Testimony of Martin Caper.)

Q. Was it in the morning or evening that you went up there? A. In the evening.

Q. In the evening? A. Yes.

Q. What time in the evening?

A. I don't know; I think it was about two or three o'clock, somewhere.

Q. Two or three o'clock? A. Yes.

Q. How long were you up there?

A. I just went up there and stayed about an hour or so.

Q. About how long? A. About one hour.

Q. Where did you spend the one hour?

A. I was looking around; looked at his holes there, and what he has been working, and looked around to see if I could not locate some ground for myself.

Q. Did you find any ground? A. No.

Q. Did you go up above the hole?

A. Yes; there was a post there on that in November.

Q. How far up above the hole did you go?

A. About a hundred feet or so.

Q. A hundred feet or so above the hole?

A. Yes.

Q. Wasn't that up out of the side lines of the Lewis Hope claim? A. I don't know.

Q. Did you know what this hole was that you went to? A. Yes.

Q. What was it? A. It was his location.

Q. How far would the side lines be from the location? A. What do you mean by "how far"?

(Testimony of Martin Caper.)

Q. Do you understand the question?

A. No, sir; I do not.

Q. How far on each side of your location hole do you claim generally as a miner, when you locate a claim?

A. I do not understand what you mean.

Q. How wide is the claim?

A. Six hundred feet wide.

Q. How wide on each side of the claim?

A. Three hundred feet on each side.

Q. Was this cut on the vein?

A. This cut was on the vein.

Q. How far did you have to go to get outside of this claim?

A. Well, his cut was crosscut; he crosscut the vein.

Q. How far would you have to go from the center of that vein to get outside of the claim?

A. Well, I could not tell exactly how far you would have to go to get outside of his claim; I didn't know where his monuments was.

Q. Did you ask him where his monuments were?

A. Yes; I asked him if that was his monuments what was up there.

Q. Did you go outside of his monuments?

A. Yes, sir.

Q. And you only went a hundred feet above the hole?

A. About a hundred feet above the monument.

Q. What claim was above that claim?

A. Well, he claims it himself.

(Testimony of Martin Caper.)

Q. What claim was above that claim; was there any other claim located on that hill?

A. Well, several parties in there had claims; I could not tell exactly who was next to him.

Q. You could not tell exactly who was next to him?

A. No.

Q. Was there somebody next to him?

A. Well, the Mizpah ledge was below it.

Q. You didn't look for anything below it, did you?

A. No.

Q. What did you find above it?

A. Just walked up above it on the side there.

Q. Did Mr. Carr go up with you?

A. No, he stayed there by the monuments and read his notice.

Q. Did Mr. Carr go up the hill with you from that cut? A. No, sir.

Q. He did not? A. No.

Q. Did Mr. Carr take you up to show you some vacant ground? A. Yes.

Q. Why didn't he go up with you?

A. He showed me there was a piece in there, and I went around myself in there, and he says it was a small piece, so I thought I would not bother with it.

Q. Did you find any vacant ground? A. No, sir.

Q. You didn't find it? A. No.

Q. Did you look for it?

A. I thought that was vacant there, I wasn't sure it was vacant or not, the monument was all around there;

(Testimony of Martin Caper.)

he says it was vacant, but I wasn't sure it was vacant or not; he told me it was vacant.

Q. Did you look to see whether it was vacant?

A. No, I did not.

Q. You did not? A. No.

Q. You were not very anxious to get a claim, were you?

A. Well, I was anxious to get a claim; yes, I was.

Q. You went up there solely to get a claim, didn't you? A. Yes.

Q. Now did you see a single, solitary claim located above this one that Mr. Carr claims? A. No.

Q. How long did you stand upon this hundred feet point above the cut, how long did you stand there?

A. I didn't stay very long; I don't know how long; stayed a few minutes.

Q. Did Carr stay down in the cut while you stayed up there? A. Yes.

Q. Then you came down?

A. I didn't stay in one place; I was walking around, and he stayed by his monuments.

Q. What was he doing?

A. Staying there, reading his notice or paper that he had.

Q. Staying there reading his notice for an hour?

A. I don't know an hour; he was staying there waiting for me.

Q. Was it when you came back, or went up the hill, that he took this notice out of the can?

(Testimony of Martin Caper.)

A. He took the notice out of the can when I was there, before I went up the hill.

Q. Just as soon as you got there?

A. Yes, as soon as I got there.

Q. Now, as a matter of fact, didn't he take you up there as a witness, and not to get a claim?

A. He didn't tell me that he took me for a witness; he told me to come up there and see his ground, what he had located, and see his claim.

Q. Did you look at this notice?

A. Yes, I was looking at it.

Q. Did you read it?

A. Didn't read it; could see his name on it.

Q. Did you try to read it?

A. I tried to read it; I could see it was his name and Charlie Carr, Lewis and Charlie Carr on the lower part of the notice.

Q. Was it written "Carr and Lewis," or "Charlie Carr?"

A. Charlie Carr was the name on it, and Lewis.

Q. Which was first?

A. Well, I don't know exactly which was the first, but I know it was two names.

Q. Was that all you saw? A. Yes.

Q. That is all you saw? A. Yes.

Q. You are positive about the names signed to that, are you? A. Yes, sir.

Q. Have you ever seen that notice since you came here? A. No, sir.

(Testimony of Martin Caper.)

Q. Haven't these gentlemen here, the attorneys, showed you a copy of that notice? A. No, sir.

Q. They have not? A. No, sir.

Q. Which name was on there first?

A. I could not say which was the first, whether it was Lewis or Carr, but I know there was two names on it, Lewis and Carr.

Q. Was it signed "Charlie Carr?" A. Yes, sir.

Q. Was it "Carr" or "Corr?"

A. I could not tell you.

Mr. GOODWIN.—I think this has gone far enough, and I object on the ground it is immaterial and purposeless; no man could be presumed to testify to such details.

The COURT.—I am inclined to think the witness has been answering you the best he could.

Q. I would like to ask this question, whether the name was Charlie Carr, whether he remembers?

A. I remember it was Carr; there was Carr, I remember Carr and Lewis, I remember that.

Q. You don't remember the first names of either one of them, do you? A. No, sir.

Q. You do not? A. No, sir.

Q. And that is all that you saw of the notice?

A. Yes.

Q. What kind of a can was this in, this notice?

A. It was a small can; I could not tell, but it was a little can, looked like an oyster can more than anything else.

(Testimony of Martin Caper.)

Q. Did he have to dig it out of the rocks?

A. Pulled the rock out; it was put in a hole there in the rocks.

Q. Did you go up to this monument? A. Yes.

Q. Was Mr. Carr sitting down beside it when you went up there? A. What?

Q. Which side of the cut was this monument on?

A. It was above the cut a little ways, probably three or four feet.

Q. What was the character of the ground?

A. Porphyry formation.

Q. Was there much slide rock there?

A. I don't know; I know it was lime and porphyry; that is all I know what was there; I could see lime and porphyry.

Q. Lime and porphyry? A. Yes.

Q. How was this; was this on the hog back or in a gulley, or how?

A. Well, there was not very soft ground in there, it was very hard; pretty soft on top, but down at the bottom it was hard.

Q. What did this vein look like?

A. It was quartz.

Q. Which way did it dip?

A. I think it was dipping pretty near to the east, not quite.

Q. What angle was it standing, straight or to the east?

A. Not quite; pretty near perpendicular.

(Testimony of Martin Caper.)

Q. Pretty near perpendicular? A. Yes.

Q. Was this vein cropping on the surface?

A. I didn't notice whether it cropped any on the surface or not.

Q. How far did it go through it?

A. Well, I went around for probably a hundred or two feet, all around.

Q. No, how far did this crosscut run through the vein? A. About fifteen feet, I think.

Q. How far from where the crosscut was started to where it encountered the vein?

A. It was about six or seven feet.

Q. Then the crosscut extended how many feet past the vein? A. Well, about seven feet.

(Q. About seven feet? A. Yes.

Q. Then the crosscut, as I understand it, went straight through the vein? A. Yes.

Q. It was cut in two?

A. Yes, cut in two.

Q. And seven feet beyond the vein? A. Yes.

Q. Was the hill steep at that point?

A. Pretty steep.

Q. Pretty steep ground? A. Yes.

Q. And this crosscut started right in and gradually got deeper? A. Yes, got deeper.

Q. How high would you say the face of this crosscut was? A. I think about ten feet.

Q. About ten feet high? A. Yes.

Q. From where it stopped? A. Yes.

(Testimony of Martin Caper.)

Q. What kind of a monument did they have there, a location monument?

A. Well, I saw some little brush around the rocks, rocks and little scantlings inside of the rocks, scantling put in the center of it.

Q. What size scantling?

A. I think 3 by 4, something like that.

Q. Any marks on it?

A. I didn't notice whether it was marked or not.

Q. You didn't notice whether there were any marks on there or not? A. No.

Q. How high was this rock monument?

A. I think it was about three feet or three feet and a half.

Q. How big at the base?

A. At the bottom?

Q. Yes. A. About four feet.

Q. When you got up there did this work look like it was fresh work in that cut?

A. I don't know whether it was first work or last work; Carr told me that he was done, and that he took his tools out of there; he says his work is done, and took his tools out of there.

Q. What did the tools consist of?

A. He had a few drills there.

Q. What else? A. Pick and shovel.

Q. What else? A. I don't know anything else.

Q. Did he have any single jack or double jack?

(Testimony of Martin Caper.)

A. Single hand hammer and a crow-bar.

Q. How many drills did he have?

A. I don't know exactly how many. I should think—I don't know exactly how many, it was half a dozen anyway.

Q. Did he have any powder or fuse or caps left?

A. I didn't notice what he had; no, I don't think.

Q. You don't think? A. No.

Q. In coming down the hill where did you come first, what point did you come to first?

A. I went right straight down, and he went with the tools to the place, says he is going to take the tools where they belonged, where he got it, and I don't know what he did.

Q. You didn't help him take the tools down?

A. No, sir, I did not.

Q. Did he take all the tools away at that time?

A. He took all the tools himself.

Q. All the tools himself? A. Yes.

Q. That is, half a dozen drills and a hammer and a crow-bar and pick and shovel? A. Yes.

Q. He took them all away and said he was going to take them where they belonged?

A. Yes, going to take them where he got them.

Q. Where did you go?

A. I went to town.

Q. Did you go back up there to look for ground any more? A. No, sir.

(Testimony of Martin Caper.)

Q. That is the last time you went up there?

A. That is the last time I went up there.

Q. Did you hear of anyone else owning any claim upon that hill?

A. There was lots of people came in gone up there, I know went over the hills to look at the ground. I don't know who they was or what it was for, or anything

Q. You have testified in answer to a direct question by Mr. Goodwin that you had heard that Carr and Lewis owned a claim up there, have you not?

A. Yes.

Q. Who else did you hear owned a claim up there?

A. I didn't hear anybody else.

Q. You didn't hear anybody else? A. No.

Q. What did you do after your trip up there, where did you go then? A. I went to town.

Q. You went to town? A. Yes.

Q. Did you go to work then?

A. I went to work that night.

Q. You went to work that night? A. Yes.

Q. Did you work steadily, or off and on, odd times?

A. Sometime I worked two or three months, and then I lay off and prospect, and then work again two or three months, and so on; I didn't work steady all the time.

Q. You had a prospecting trip with Mr. Carr, did you not? A. Yes, I did.

Q. Whereabouts, where did you go?

(Testimony of Martin Caper.)

A. Went to Silver Peak with him.

Q. How long were you down there?

A. I think we stayed there about five or six days.

Q. Did you locate anything?

A. Yes, sir, we located some ground there.

Q. I suppose you have got that now?

A. No, we have not got it, because we didn't do the work on it.

Q. You and Carr don't seem to have been very good at doing work?

A. Well, it wasn't very rich for us, and we thought we didn't care for it, wasn't good enough to do the work, the assessment.

Q. How good was it?

Mr. GOODWIN.—I object to that as entirely irrelevant and immaterial.

Q. You went out to Lone Mountain also, did you, on a prospecting trip? A. Yes.

Q. What month was that in?

A. I think it was about in January.

Q. In January? A. Yes.

Q. Can you fix in your mind what time in January that was?

A. Well, it was 1901, in January, I think.

Q. You don't mean January, 1901, you mean 1902, don't you? A. 1902, that is it.

Q. How long were you on this trip?

A. About five or six days.

(Testimony of Martin Caper.)

Q. Did you locate any claims on this trip?

A. No, sir.

Mr. GOODWIN.—I object to this as not cross-examination of anything brought out by us, I cannot see the point to it. I am not disposed to make any objection to anything that counsel thinks is material, but I cannot see any materiality to this.

The COURT.—I understand the object, but I think you have gone far enough.

Q. Mr. Caper, when is the first time since going up to this cut with Mr. Carr that you have discussed that trip with anyone?

A. You mean when I went up to that cut?

Q. Since coming down, when is the first time that you have discussed the facts that you have testified in regard to it with anybody?

Mr. GOODWIN.—What he means, Mr. Caper, is, when did you first tell anybody, after you had gone up there with Mr. Carr, and went back, when did you first tell anybody that you had been up there with Mr. Carr and had seen this cut.

A. I don't know, I told several parties, and I don't remember what I did tell.

Q. You don't remember the first time that you told anything about it?

A. No, sir; all I remember, I was up there and seen it.

(Testimony of Martin Caper.)

Q. Have you ever discussed what you would testify in this case with Mr. Goodwin, the attorney here?

A. I don't understand what you mean.

Q. Mr. Caper, when did you first tell any of these gentlemen what you knew about this case?

A. No, sir.

Q. When did you; you never did? A. No, sir.

Q. Did you ever tell Mr. Goodwin before coming on this stand that you had been upon the hill with Charlie Carr? A. Yes, sir; I told him.

Q. When? A. I told him to-day.

Q. To-day? A. Yes.

Q. That is the first time?

A. The first time, yes.

Q. Did you ever tell Mr. Duryee, the gentlemen sitting at the end of this table, what you knew about this case? A. No, sir.

Q. You never did? A. No, sir.

Q. When were you subpoenaed in this case?

Mr. GOODWIN.—We will admit that he was subpoenaed this morning.

The COURT.—When did you get the paper; when did the officers serve a paper on you telling you to come into court?

A. Well, it was about a couple of weeks ago; I met Charlie Carr and he told me that he lost that claim what he had done his work on.

Q. Told you what?

(Testimony of Martin Caper.)

A. Told me that he had lost that claim what he was working on.

Q. He lost that claim?

A. Lost that, and I ask how he lost it, and he says the party jump him.

Q. Where was this conversation?

A. That was in San Francisco.

Q. In San Francisco? A. Yes.

Q. Did he take you to see his attorneys there?

A. No, sir.

Q. He did not? A. No.

Q. When was the paper served on you to come into this court? A. To-day.

Q. To-day? A. Yes, sir.

Q. When did you get to Carson? A. To-day.

Q. Where did you come from?

A. San Francisco.

Q. Did you get on the train at San Francisco to come here? A. I got onto the boat first.

Q. Were you coming to Carson? A. Yes, sir.

Q. For this trial? A. Yes.

Q. Mr. Caper, how do you remember that it was in the month of January that you went to Silver Peak, did you make a memorandum of it?

A. I know it was. I am sure of it because it was after Christmas.

Q. It was after Christmas?

A. We went down to Silver Peak.

Q. It could not have been in February, could it?

(Testimony of Martin Caper.)

A. No, sir.

Q. It could not have been in February?

A. No, sir, because in February I was working in the mines there for John Chiatovich.

Q. How do you know it was in October that you went up on the hill with Mr. Carr?

A. Well, I was prospecting around in November, I am sure it was. I was sure it was in October that I was on the hill, because I stayed in Tonopah only a few months, and then I was to go to the mountains a few days again, that is in November, so I was pretty sure it was in October.

Q. You were out of town in November part of the time?

A. Part of the times, yes, a few days I was, and then I went away.

Q. Is it not possible that this could have been in December? A. No.

Q. It is not possible? A. No.

Q. You never made any memorandum of it, did you?

A. No.

Mr. CHARLES J. YOUNG, called and sworn on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Where do you reside, Mr. Young?

A. In Tonopah.

Q. How long have you been there?

(Testimony of Charles J. Young.)

A. Since 1901.

Q. Since what time in 1901?

A. The 6th of October.

Q. The 6th of October, 1901? A. Yes, sir.

Q. Were you acquainted at that time with Charlie Carr and Dave Lewis?

A. I knew Carr and his brothers years before that in San Francisco, and Lewis I never knew until I went to Tonopah.

Q. At that time did you hear it rumored around there that Carr and Lewis had a claim located upon the side of the mountain there?

Mr. METSON.—I object to the rumor, it is hearsay and incompetent.

The COURT.—I think it is as near the point as some of the questions that have been asked; I will take it for what it is worth.

(Question read.)

A. You mean at that particular date?

Q. No, early after you got into Tonopah, you say you went there October 6th, 1901?

A. Yes, sir; there was an instance happened that memorized it to me that Lewis was interested in a claim upon the hill with Carr.

Q. When was that?

A. That was along in about somewheres in the neighborhood of the 15th of October, when I moved into

(Testimony of Charles J. Young.)

the building where the Frisco store now stands on Main street.

Q. What was that incident?

Mr. METSON.—The same objection.

The COURT.—I do not know what it is. I do not know whether it has any relevancy or not, if it has not it will not be considered by the Court.

Q. Did that incident have reference to Carr and Lewis, and their location?

Mr. METSON.—If he gives hearsay testimony, I insist on my objection.

The COURT.—If it is hearsay the Court will not consider it.

(Question read.)

A. Yes.

Q. What was it?

A. Why, about that time I moved from Tom Kendall's saloon, the station I had there, a lunch counter, and opened up a tent at this point, and I needed a shovel and pick, and didn't have any money to buy one, so I had to borrow one, and I sent Wise out to borrow one, and he borrowed one, and it came from—I didn't know at the time, but Lewis came the next day wanting his pick and shovel, and we didn't have his pick but had his shovel, however, and I asked him if he could not let it be there for a while, and he said no.

(Testimony of Charles J. Young.)

Mr. METSON.—I object on the ground it is hearsay.
(Objection sustained.)

Q. Did you ever go upon the hill there where the Carr and Lewis location is situated, up northeast of Tonopah?

A. I was never up there on that location until along in the latter part of December and January, when I was looking for some fractions.

Q. December, 1901, and January, 1902?

A. Both those, yes.

Q. You were up in that neighborhood then?

A. Yes, sir.

Q. Did you see any work there at that time that was claimed to have been done by Carr or Lewis?

Mr. METSON.—I object to that.

The COURT.—Was there any work at a certain point?

Q. Just a moment. Do you know where the North Star shaft is now situated?

A. Well, I know about where it is.

Q. When you were up there on the mountain in December, 1901, or January, 1902, did you see any evidence of any work having been done near the point, or approximately near the point?

A. Where the shaft is now?

Q. Yes.

A. I could not say exactly where the shaft is, because I had no interest to locate the shaft in its present position, but in that cave there was some work done

(Testimony of Charles J. Young.)

on the side of that hill, and which is the base of the point of the mountain going around to Golden's tunnel; of course I had a point to follow, that reef of riolite cropping down, and I was close to it, three hundred feet, not closer than three hundred feet, but close to that some excavation was made. Who did it I don't know.

Q. What did it look like, a cut run in there and a dump thrown out?

A. There was a dump like somebody had been digging a hole and thrown the dirt out; didn't seem like a cut to me, it was an embankment.

Q. In the fall of 1901 did you ever see Carr or Lewis working up there on the side of the mountain?

A. I never seen either of them work up there. I don't know who was working in the cut. I was up there one day and some stuff was coming down the hill. I don't know who was up in the hole.

Q. You don't know who was doing it? A. No.

Cross-examination by Mr. METSON.

Q. It was in December, 1901, that you saw that dump, was it?

A. That was the first time I was close up so I could recognize it was a dump, and that a dump was there on that ground on the side of the hill; that is, up above the Montana now, where the Montana shaft is.

Q. That was in December, 1901, or January, 1902?

A. It was along in the latter part of the month, or

(Testimony of Charles J. Young.)

about the first of January; it was along in the sickness, that time.

Q. How close to that dump were you?

A. In the neighborhood of 250 feet to 300 feet.

Q. Below it? A. Below it; yes, sir.

Q. You could not tell whether it was a cut, shaft or incline from where you were? A. No, sir.

Q. But you could see the dump?

A. Yes, sir; that is, I could see where some one had excavated fresh earth out of it and thrown it up, it was then over the surface formation.

Q. The same dump exists there now?

A. There is a riolite dyke coming down there and crossing into the hill, Mount Oddie; I was tracing that down and down into my ground where I had my cabin, locating the strike or trend of the Mizpah ledge, and it was 200 feet below this point of this dump where I was.

Q. Could you tell about what time in December was the first time you noticed that?

A. If I knew what time my friend died here I could tell you, Fred Knutz died, but I don't know.

Q. Could you say it was the middle or last part of December?

A. The latter part of December, and in January I was looking for some fractions up in there, and I located, or I got in line, the Black Mascot, adjoining Mr. Oddie's "Bob Tail" and the "Sand Grass" of the company; I had that picked out, and I understood there

(Testimony of Charles J. Young.)

was some fractions upon the Mizpah, and that took me upon the ground.

Q. This dump that you saw in December or January, could that be seen from town?

A. Yes, you could see that; a person looking could see it was going towards the point of the mountain, the northwest point of the mountain.

Q. Going towards the northwest point of the mountain?

A. Yes, it would be, looking that way towards the northwest point of the mountain.

Redirect Examination.

Q. Did I understand you to say that you never saw either Lewis or Carr going up towards this place to work?

A. No, I didn't say that; I said I didn't see either of them working on this portion of the ground.

Q. Neither of them working on the ground?

A. Yes.

Q. Did you see either of them at any time leave your presence or did either of them ever leave your presence with a pick and shovel going towards this ground?

A. When I gave Lewis the shovel he said he was going to do this—

Mr. METSON.—I object to what he said.

The COURT.—Did he go in that direction?

A. Well, he went over across the street, went away from me.

Doctor JEROME P. PORTER, one of the plaintiffs, called and sworn, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. Have you ever been in Tonopah? A. I have.

Q. When did you first go there?

A. In the month of November, 1901.

Q. You are one of the plaintiffs in this action?

A. Yes, sir.

Q. While in Tonopah in the month of November, 1901, did you go out on the mountain east of Tonopah, where the land in question is situated? A. I did.

Q. Were you on the ground that subsequently you ascertained was the ground which is included within what we claim to be the Dave Lewis Hope mining claim?

A. I was.

Q. While on this ground at that time in November, 1901, did you see any cut? A. I did.

Q. Do you know now where the North Star shaft is situated on that same tract of ground? A. I do.

Q. Where was the cut that you then saw situated with reference to the present North Star shaft?

A. Just a little north of it.

Q. Did you pay any particular attention to the cut at that time? A. No, not particularly.

Q. Were you on the ground after that at any time?

A. Yes, the next spring.

Q. What time the next spring?

A. The month of April.

(Testimony of Dr. Jerome P. Porter.)

Q. Could you give the day?

A. Well, it was in the latter part of the month.

Q. That would be in April, 1902? A. Yes.

Q. With whom did you go on the ground?

A. Dave Lewis.

Q. Did you and Dave Lewis go up to this cut that you had seen the fall before? A. Yes, sir.

Q. It was still there? A. Yes.

Q. At that time, or shortly after that time, did you become interested in that location? A. I did.

Q. Were you on the ground in the month of May?

A. I was.

Q. Say from the middle of May to the 17th of May following? A. Yes, sir.

Q. State to the Court what you did, if anything with reference to working that claim at that time, and with reference to this particular cut?

A. Well, at that time I had a bond on this claim, and I heard that some assessment work had been done for that year, but I wanted to be sure, and I did a hundred dollars' worth of work and more, myself, in this particular cut.

Q. Just answer my questions, Mr. Porter, please. What work did you do there at that time, or cause to be done at that time, with reference to this particular cut?

A. Well, I enlarged it.

Q. You enlarged it, how do you mean?

A. The cut then was four and a half feet wide, and I enlarged it to about fourteen feet wide, and cut a large adit in the hill.

(Testimony of Dr. Jerome P. Porter.)

Q. In other words, you carried that cut into the hill 14 feet wide? A. 14 feet wide, and carried it right in.

Q. Did you do anything with reference to sinking any shaft at that point? A. Yes.

Q. What did you do?

A. In running this cut, of course the vein that was there was exposed pretty close to the center of this adit; the vein was exposed along the center of this adit, and there I sunk a prospecting shaft 5 by 8 in the clear.

Q. Did you have any photograph made of that cut and the vein exposed at that time?

A. Well, prior to my work.

Q. That is prior to that work? A. Yes.

Q. State to the court whether or not that is a copy of the photograph that was taken of that cut? (Hands photograph to witness.)

A. That is a copy.

Q. Who is present there in the picture?

A. Myself and Mr. Vaughn, a man that I had working for me.

Q. State whether or not what you term the vein or ledge is represented in that photograph?

A. The vein is represented by that dark streak that runs right down there, of quartz.

Q. Now, that photograph represents that cut as you found it there before you had done any work enlarging it, or sinking this shaft that you speak of? A. Yes, sir.

Mr. GOODWIN.—We will offer this photograph in evi-

(Testimony of Dr. Jerome P. Porter.)

dence as Plaintiffs' Exhibit No. 5. (Photograph admitted, without objection, and marked Plaintiff's Exhibit No. 5.)

Q. In addition to the work that is represented by that cut there, what was the value of the work that you caused to be done at that time?

A. Well, I did more than a hundred dollars' worth of work, in money expended, then the labor that I performed myself; I handled a pick and shovel myself, to a certain extent.

Q. In other words, you paid out more than a hundred dollars in money for the labor that you had done, besides working there yourself?

A. Yes, sir.

Q. And that labor was in enlarging this cut to 14 feet?

A. Fourteen to sixteen feet, a pretty large cut.

Q. And sinking this shaft 5 by 8 in the clear?

A. Five by eight in the clear.

Q. And how deep?

A. About 7 to 8 feet deep from the bottom of the cut

Q. From the floor of the cut it was 7 or 8 feet deep?

A. Seven feet or so, I didn't measure it.

Q. Was that shaft sunk on the ledge?

A. Right on this vein that shows in the photograph, the vein of quartz; the vein of quartz was right in the center of the shaft.

Q. Was Dave Lewis with you at that time?

A. Yes, he was with me all of the time.

Q. Was he with you at the time that you first went out there and these photographs were taken, before you did your work, did he go onto the ground with you?

(Testimony of Dr. Jerome P. Porter.)

A. Yes, sir, I have his photograph in one of these which will be presented later.

Q. Just answer my questions, please?

A. He was with me, yes.

Q. Did he show you what purported to be or what he claimed to be the stake representing the south center of the Dave Lewis Hope claim? A. Yes, sir.

Mr. METSON.—I object to that on the ground it is hearsay and incompetent.

The COURT.—Not what Lewis told him, but what he saw and where he saw it.

Mr. GOODWIN.—I asked him did Lewis point out to him a stake, which Lewis represented to be a certain stake.

The COURT.—I will allow it. Defendant excepts.

Q. Where was that stake with reference to the Mizpah ground, was it near the Mizpah?

A. Well, it was practically on the Mizpah ground.

Q. It was practically on the Mizpah ground?

A. It was on the Mizpah ground.

Q. Referring to this diagram that has been testified to by several parties, specifying this as north, towards the top of the board, and west is towards the left hand, and east to the right, and south towards the bottom of the board; what point or figure there would represent what he pointed out to you as being the south center line of the Dave Lewis Hope?

(Testimony of Dr. Jerome P. Porter.)

Mr. METSON.—I suppose we have the same objection to that?

The COURT.—Yes, and I will allow him to answer.

A. This is what represents the south center post of the Dave Lewis Hope, which he pointed out to me as being the south center post of the Dave Lewis Hope. (Indicates point 8 on plat.)

Q. By the 17th of May had you acquired an interest in this Dave Lewis Hope claim? A. Yes, sir.

Q. On the 17th of May did you make a corrected location of the Dave Lewis Hope claim?

A. I made an amended location.

Q. Where was the south center post of the amended location placed with reference to the south center of the Dave Lewis Hope, as pointed out to you by Dave Lewis?

A. We didn't move it, we left it where it was, didn't change it.

Q. You didn't change it?

A. No, we didn't change it.

Q. Prior to that time had Lewis taken you around the exterior boundaries of the Dave Lewis Hope claim?

A. Yes, sir.

Q. State to the Court what you found at the different corners, taking the northeast corner, the north center, the southeast corner, and the east center side line.

A. Dave Lewis took me to these corners and showed me mounds of rock placed there he said by himself.

(Testimony of Dr. Jerome P. Porter.)

The COURT.—Never mind what he said, just what you found there.

A. In these mounds of rock were posts and tin cans.

Q. Did he take you to what he represented to be the south center of his claim?

A. Yes, sir, he did that the first thing.

Q. What did you find there?

A. A post there in a mound of rock, and a tin can.

Q. Did he take you to what he represented to be the southeast corner of the claim, and approximately what distance was that from the south center?

A. Three hundred feet.

Q. Approximately? A. Yes.

Q. What did you find there?

A. A mound of rock.

Q. Anything else?

A. A tin can and a post.

Q. Was there anything in those cans, or did you look?

A. In some cans there was, but in others there wasn't.

Q. Did he take you to any point that he represented to you to be the center of the east side line?

A. Yes.

Q. What did you find there, and what was the distance at that point from the southeast corner?

A. Approximately 750 feet, with a mound of rock, as I have already stated, with a post in it.

(Testimony of Dr. Jerome P. Porter.)

Q. Did he take you to what he represented to be the northeast corner of the claim? A. Yes.

Mr. METSON.—This is objected to on the ground he is testifying these points are there.

The COURT.—Let the objection be noted. Defendant excepts.

Q. What did you find there?

A. A mound of rock with a post in it.

Q. Did he take you to what he represented to be the north center? A. Yes.

Q. What did you find there?

A. A mound of rock and a post, with a tin can.

Q. Did he take you to what he represented to be the northwest corner of the claim? A. He did.

Q. What did you find there?

A. A mound of rock with a post and a can.

Q. Did he take you to what he represented to be the center of the west side line? A. He did.

Q. What did you find there?

A. A mound of rock with a post.

Q. Did you prepare an additional and amended certificate of location of the claim? A. I did.

Q. Is that the original? (Hands paper to witness.)

A. That is the original.

Q. Did you make a copy of that, Doctor Porter?

A. Yes, I made one. I don't know whether I have any with me.

(Testimony of Dr. Jerome P. Porter.)

Q. No, I mean at the time did you make a copy of that? A. Yes, I had duplicate copies.

Q. Did you post it on the ground? A. No.

Q. You did not? A. No.

Q. This you sent to the recorder and had recorded?

A. Yes.

Q. And no copy of this was posted on the ground?

A. No.

Mr. GOODWIN.—We offer this in evidence.

Mr. METSON.—We object on the ground that the paper seems to have been altered and interlined, especially with reference to the record thereof, and until that is explained we will object to it. May 21st seems to have been stricken out and June 19th to have been put in, and 17 written up above.

Mr. GOODWIN.—What does your record purport to show?

Mr. METSON.—Our record purports to show it was recorded on May 17th, and it purports to show further it was thereafter altered and interlineations put in it after it had been recorded. We will ask leave to cross-examine the witness before it is admitted.

The COURT.—Let it go in subject to the proof, if there is any point on it after the evidence is in, it can be made.

Q. Mr. Porter, did you send this to the recorder to have it recorded? A. I took it there personally.

(Testimony of Dr. Jerome P. Porter.)

Q. You took it there personally? A. Yes.

Q. And this change, if any, was that on there when you got it back?

A. It was made by the county recorder.

Q. It was made by him, and you got this instrument back in the condition in which it now is?

A. Yes, and I think you will find his initials there.

Q. Whatever change appears on the back of that instrument was made by the county recorder at the time he was recording it? A. Yes.

Q. And is that true of the changes on the face of the instrument?

A. That is in my handwriting (indicating); that is the only change I made, right here, "monument" instead of "shaft," and that was done with an indelible pencil.

Q. And was done when?

A. Before it was sent to the recorder.

The COURT.—Who was that made by, Mr. Wharburton? A. Yes, sir, he did the recording.

(By Mr. METSON.)

Q. Doctor Porter, when did you deliver that paper to Mr. Wharburton first?

A. Some time in May. I don't know the dates.

Q. Was it on May 17th? A. About that time.

Q. Then after that did you not go back and make additions to the paper in June?

A. Yes, I had a survey made.

(Testimony of Dr. Jerome P. Porter.)

Q. You went back and had additions made to that paper in June? A. Yes.

Q. Is that correct, sir? A. Yes.

Q. Where is the paper that you filed with Mr. Wharburton?

A. That is the one, he made the changes there himself.

Q. He made the changes in June on a paper theretofore filed in May?

A. Yes, sir; he interlined that himself, or made the changes himself; that is the original paper.

Mr. GOODWIN.—Mr. Metson means is there another instrument; wasn't there another instrument that you took there May 17th, and then after you had your survey you recorded an additional and enlarged instrument; what is the fact? If you have such another one we will want them both. A. We have it.

Q. You have the other? A. Yes.

Q. Whereabouts is that?

A. It is in my room, I think, at the hotel. I have Mr. Wharburton's stamp on the back of the other one also.

The COURT.—The other copy of this with the changes in the other, and some additions, was that recorded by Mr. Wharburton? A. Yes, sir.

The COURT.—If you take them both it would explain the thing, and do away with the objections.

(Testimony of Dr. Jerome P. Porter.)

Mr. METSON.—Q. I show you, Doctor Porter, this instrument about which we have been asking you questions, and ask you if these words, “It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State,” were not interlined in the document that you gave to Mr. Wharburton on May 17th?

A. I would have to look up the document.

Mr. GOODWIN.—We will produce the other document.

A. I cannot remember those things, I haven’t looked at them for a couple of years.

Mr. GOODWIN.—We will offer this as Plaintiff’s Exhibit No. 6.

The COURT.—I will admit it subject to the other, and see what the facts are. It will be admitted subject to the objection.

Complainants’ Exhibit No. 6.

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents that the undersigned Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by the rights of the original discovery, and the location heretofore made such deeds, transfers or conveyances as may have been made, and this amended

(Testimony of Dr. Jerome P. Porter.)

certificate made, filed and recorded as provided by federal law and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with three hundred feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Locations, pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said county and State. The name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery monument there is claimed by me one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein. The general course of this vein is north 8° west by south 8° east.

The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep.

(Testimony of Dr. Jerome P. Porter.)

This is further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada. Approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the northwest corner post marked N. W. corner Mizpah Intersection; thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection; thence 750 feet south 8° east to southwest corner post marked S. W. corner Mizpah Intersection; thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection; thence three hundred feet east 8° north to southeast corner post marked S. E. corner post Mizpah Intersection; thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection; thence seven hundred

(Testimony of Dr. Jerome P. Porter.)

and fifty feet north 8° west to northeast corner post marked N. E. corner post Mizpah Intersection; thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection; thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP.

R. A. VAUGHN.

(Endorsed:) Am. Cert. of Location filed for record June 12th, 1902, at 12:15 P. M. Recorded in Book "C," page 394-5, Tonopah Mining Records. R. C. Gordon, Mining Recorder. W. B. Sollender, Acting Recorder.

Recorded at request of J. P. Porter, May ¹⁷ 11 and June 9, A. D. 1902, at 2 min. past 2 P. M. in Book E of Min: Loc., pages, 141-2, Nye County, Nevada, Records. W. Brougher, Recorder. By Thos. Wharburton, Deputy.

(Marked Complainants' Exhibit No. 6.)

Q. When you were there in May was Mr. Carr with you?

A. Well, he came there; he was not with me particularly, he came there while I was in town.

Q. Were you and he on the ground there together?

A. We were.

Q. With Lewis? A. Yes.

Q. Mr. Porter, there is a copy of a photograph that has been admitted in evidence, do you recognize it?

(Hands Complainants' Exhibit No. 3 to witness.)

(Testimony of Dr. Jerome P. Porter.)

A. I do.

Q. State approximately when that was taken with reference to the 17th of May, 1902?

A. Just about that time.

Q. About that time? A. Yes.

Q. Was that taken before or after you had done what you term the assessment work there?

A. Afterwards.

Q. There is a point there marked in lead pencil "P," another one "T," another one "W of C," another marked "C," another "L," and another marked "Carr." State to the court what those points indicated in that photograph so marked represent if you can so state.

A. These points represent the corner posts of the claim; I tried to have the posts photographed, but they were so small they would not show, so I had a person stand at each post, and you have to put a glass on it to see the people.

Q. Now the point marked "P" on that diagram represents what? A. The southeast corner.

Q. The point "Carr" represents what?

A. The east center post.

Q. The point marked "L" represents what?

A. The west center post.

Q. The point marked "T" indicates what?

A. South center.

Q. The stake marked "W of C" represents what?

A. That is the east center post of the Mizpah.

(Testimony of Dr. Jerome P. Porter.)

Q. The east center post of the Mizpah?

A. Yes.

Cross-examination by Mr. METSON.

Q. Doctor Porter, you say that you first went to Tonopah in November, 1901? A. Yes.

Q. Where did you go from?

A. I was traveling with a concert company.

Q. Who were in that company?

A. I was one of the owners of it.

Q. Who were the other owners?

A. Mr. Charles; it was called the Porter-Charles Concert Company.

Q. What time in November did you arrive at Tonopah?

A. About a week before Thanksgiving.

Q. At what place did you stop while there?

A. We were camping.

Q. Where did you put your camp?

A. Right near the lower part of town, just as you enter the town.

Q. How many were in the company?

A. About eight or nine performers.

Q. Where did you go from Sodaville?

A. We went from Sodaville there, we showed in Sodaville.

Q. You showed in Sodaville? A. Yes.

Q. Also at what other place? A. Tonopah.

Q. Any other place?

(Testimony of Dr. Jerome P. Porter.)

A. In Carson, Reno and Virginia City, all over the place here.

Q. How long did you stay in Tonopah?

A. About a week or a little more.

Q. Did you show every day?

A. Well, there were one or two things happened, funerals and one thing and another, we didn't show every night, four or five or five or six concerts during the week, about five.

Q. Where did you go then?

A. From Tonopah, Nye County to Bishop Creek.

Q. Can you tell what date you arrived at Tonopah?

A. No, I could not tell the date; it was about a week before Thanksgiving, about that; we ate Thanksgiving dinner at Tonopah, I remember, and we left a day or so after that, I think the next day.

Q. Was Mr. Charles there with you?

A. He was with me.

Q. Who was managing the company, you or Mr. Charles?

A. Well, in fact both of us, it didn't require very much management.

Q. Did you go around the mines there at all?

A. Yes, I visited several of the mines, and went in the Gordon tunnel by invitation.

Q. Which tunnel?

A. The Hudgens-Gordon tunnel, by invitation.

Q. Who was with you?

(Testimony of Dr. Jerome P. Porter.)

A. Doctor and Mrs. Hudgens, and my wife, Mrs. Porter.

Q. You were never engaged in mining before, were you? A. Oh, yes.

Q. Have you been engaged in a good deal of mining?

A. About eleven years.

Q. And you say you were in no other property there except this tunnel?

A. I went all over the Mizpah on the different claims, I didn't go down them, just examined the ore on the dumps; it was all very interesting to me of course.

Q. There were a good many locations there in November of 1901, were there?

A. Well, I didn't pay particular attention to the locations at that time.

Q. Well, you knew there were a great many there?

A. Yes, there must have been; but you are asking me what I know.

Q. You saw a great many monuments? A. Yes.

Q. And a great many excavations, did you not?

A. Yes.

Q. Just describe all the monuments and excavations you saw there, Doctor.

The COURT.—I do not think you can take in all that.

A. I can describe them all right if you want me to.

The COURT.—Of course, generally, all the posts

(Testimony of Dr. Jerome P. Porter.)

there may have been on the claim; it would only be to test the memory of the witness, if you wish to.

Q. You were around with Doctor Hudgens?

A. That day in particular that we visited the tunnel; they invited us up to their house.

Q. And you say that you were up on Oddie Mountain? A. Yes.

Q. Did anybody go up there with you?

A. I went alone.

Q. Alone? A. Yes, sir.

Q. And did you see any excavation on Oddie Mountain? A. I did.

Q. And this was in November of 1901?

A. Yes, sir, before Thanksgiving day, several days.

Q. You saw but one excavation there, Doctor?

A. Yes, up on the hill, only one that I saw.

Q. You went all over the hill looking for excavation, didn't you? A. No, I did not.

Q. But you did see one there?

A. Yes, sir; I was not looking for excavations when I saw it, I was not interested in it.

Q. How was it that you noticed this particular one?

A. That is what I wanted you to ask me.

Q. That is what we want to get at?

A. When I go to any new place of that sort, if there is any high peak I always make it a point to go up there and see the country, and I tried to get Mrs. Porter to go with me; but she did not do it, so I went to the top of this Mount Oddie at that time; you will

(Testimony of Dr. Jerome P. Porter.)

remember there was a post in a rock up there with a little board across it, it looked like a cross from the tunnel, and I pointed it out to Mrs. Porter and told her I was going there to get a view of the country. And I went up on the Mizpah ledge to the edge of the mountain, and climbed up the ridge to this monument or post or cross, whatever you call it, and I stayed there I guess for half an hour, walking back and forth, just looking over the country, and in coming down I took the short cut to Tonopah—well, it is just the natural trail, right down from the cross right to the main part of the town, and in going right down this little sort of a ravine or swag, there was a little work done there in the shape of a cut. Now why I noticed that cut particularly was not because I was interested in the claim, but Doctor Hudgens, the day before that I had gone in this tunnel with Doctor Hudgens, and having mined myself more or less for ten or eleven years, I expressed myself that Doctor Hudgens had spent a lot of money in running that tunnel, whereas I thought if he had sunk, he would have made more by it; I made that remark to several. And coming down this mountain, seeing this little work done, I don't know just how much it was, but a cut, and I stopped and said to myself that if Doctor Hudgens had sunk here instead of running this tunnel, he might have struck a fine mine, and I walked over to the edge of the mountain where I could see this Hudgens-Gordon tunnel to see if it was going to cut this ledge I

(Testimony of Dr. Jerome P. Porter.)

saw with a little quartz in, and I found his tunnel was going three or four hundred feet east of it, so I paid no more attention and came down and went down town.

Q. You took the short cut down town and the steepest part of the mountain until you came to this cut?

A. In climbing the mountain I went around the ridge where it was easier walking, but in coming down I took the straight cut like that.

Q. And you saw this little work there, and did you see a vein in it?

A. Yes, the vein came right to the grass roots; that is why I was interested in this tunnel to see if it was going to run in there.

Q. You went to the side of the mountain, to the eastward?

A. South, to see if Doctor Hudgens tunnel would cut this.

Q. To the east and south? A. Yes.

Q. And took an observation? A. Yes.

Q. To see if Doctor Hudgens tunnel would reach that? A. Yes.

Q. Then you went back to the cut again, did you?

A. Yes.

Q. Did you go down in it?

A. No, I wasn't interested in it at all.

Q. You didn't go down into the cut? A. No.

Q. How did you notice there was a vein there?

(Testimony of Dr. Jerome P. Porter.)

A. It showed from where I stood right on the side, as I walked along I could see the vein.

Q. And the vein dropped on the surface?

A. I am speaking of the quartz; the quartz showed in this vein; the croppings were 12 feet apart, if that is what you have reference to.

Q. You know what croppings are, being a miner?

A. I don't claim to be an expert miner, Mr. Metson, I have had some experience.

Q. Did it crop below this cut? Did the ledge crop below this cut?

A. The cropping of the porphyry were about 12 feet apart, and this vein that I have reference to now, that I am describing, as I stood on the side of this cut showed right down through about the center of this little crosscut that was run over this ledge matter, a little vein showing there in this crosscut; there was some croppings about 12 feet apart or so, and that was what attracted my attention, was this little vein that showed in this cut.

Q. And the croppings were on the strike of the vein, above and below the cut? A. Yes.

Q. It cropped below the strike, did it?

A. No, it didn't crop below, kind of run off into the hill, but the wall showed on the top above this vein.

Q. Did you see any croppings above the cut?

A. Yes, a little north of there, off east, above directly, would be east; but this vein matter run north and south, and north of this cut there were croppings

(Testimony of Dr. Jerome P. Porter.)

Q. Had you seen any miners around there?

A. I didn't look for miners, I wasn't interested in the place.

Mr. GOODWIN.—Just answer Mr. Metson's questions.

A. I saw no miners at all.

Q. You were interested in Doctor Hudgens, were you not?

A. I had known him for ten or eleven years, that is all, an acquaintance.

Q. You know the line of a tunnel has got to be marked on the surface, don't you?

A. At that time marked on the surface, no.

Mr. GOODWIN.—I object to this as entirely irrelevant and immaterial, and not cross-examination.

Mr. METSON.—I think the gentleman says he went around and took an observation of Doctor Hudgens' tunnel?

The COURT.—Ask what he saw.

A. Approximately, I could see that the tunnel was going to run three or four hundred feet east of there.

Q. You had to take a course upon the mountain to get this observation? A. Yes.

Q. And did you know that a line of tunnel had to be marked on the surface, under the law?

A. I did not—oh, I knew the line had to be marked, I didn't look for the line, I saw no line.

Q. And afterwards you say you went there again?

(Testimony of Dr. Jerome P. Porter.)

A. No, sir, I didn't go back again until next spring.

Q. Then you did go back?

A. I made inquiries—let me finish, and this will explain what you are trying to draw out.

Mr. GOODWIN.—Just answer the questions.

A. When I went down in Tonopah after leaving this mountain, I was interested in who owned this quartz, because in this country quartz in place is a consideration, and they told me they thought it belonged to the Butler group, as they owned everything on this side of the mountain, so I paid no more attention.

Q. You pointed out the place where you saw this quartz to the people you were inquiring of?

A. Yes, the location; I asked who owned that up there.

Q. And you say the excavation that had been made you pointed out? A. Yes, you could see it.

Q. And you could see the dump from down town, there were not many buildings to obstruct the view, were there?

A. No, you could just see a little streak.

Q. Then you asked some of the old-timers there in Tonopah what claim that excavation that had attracted your attention was on? A. Yes, sir.

Q. And do you remember who you asked?

A. I could not tell you, they were all strangers to me in Tonopah at that time.

(Testimony of Dr. Jerome P. Porter.)

Q. But you made sure they were people there that ought to know, old-timers, I suppose?

A. Well, from the answer they gave me; they said all that belonged to the Mizpah Company, or Jim Butler Company, that is what they said.

Q. Then you went back there in 1902?

A. Yes, sir.

Q. And you found all these tin cans?

A. Well, something that leads up to that.

Q. What?

A. I learned the party then that owned this ground.

Q. Answer the question: You did find all the tin cans? A. Yes.

Q. Were there enough in town after that to supply other markings?

A. Judging from the appearance, yes; they lived on canned goods there principally, so there ought to have been.

Q. You found a tin can in each monument?

A. Yes.

Q. Do I understand you to say that you did or did not find a mark in each tin can?

A. Not in all of them, some of them the marks were still there, the paper was still there.

Q. Now at the point marked number 5 will you please tell me whether or not there was a mark in a tin can, on the plat made by Mr. Carr.

A. I cannot remember just which one the paper was in, I didn't pay any particular attention; the paper

(Testimony of Dr. Jerome P. Porter.)

was in several of the cans, and some of them were taken out, or blown out, lost.

Q. Can you recall any particular monument in which there was a mark?

A. In the south center, I know there was a tin can in the south center.

Q. Please state what the mark on that was?

A. It was the south center monument of the Dave Lewis claim.

Q. That was all written on the piece of paper that was in the can? A. Yes, sir.

Q. Will you please repeat that, all of it that was on the paper?

A. This is the south center monument of the Dave Lewis Hope claim, that is as nearly as I can remember, word for word.

Q. Can you recall any other piece of paper that was marked in any other monument?

A. They were marked similarly, but in just what monuments I am not positive.

Q. Could you tell us in short, or in substance, about what the marks were that you remember, without particular reference to what monuments they were in?

A. Well, describing the corners, that was all; just describing the corners or posts; the descriptions were as short as possible.

Q. Was the name of the claim written on the pieces of paper?

A. On the pieces of paper that I saw.

(Testimony of Dr. Jerome P. Porter.)

Q. That you saw, the name of the claim was on each piece of paper? A. Yes, sir.

Q. As taken from the tin can? A. Yes, sir.

Q. Did you see any location monument there?

A. No, sir.

Q. All that you saw then was eight monuments?

A. Yes.

Q. Describe the monuments as they appeared to you in April, 1902, when you went back there?

A. Some of them were thrown down, or partially demolished; Dave Lewis took me around to them.

Q. I didn't ask that, I asked you to describe them?

A. Some were intact and some partially torn down.

Q. Take for instance the one that you say you found marked "south end center Dave Lewis Hope claim," was that up or down?

A. That was in good condition.

Q. Was that as much as four feet high?

A. I didn't measure it, but approximately it was about that.

Q. How wide was it at the base?

A. Well, that was placed—there was a cropping, there was a ledge or cropping there, and it was built right onto this cropping, and it was pretty wide, four feet or so, four or five feet.

Q. Four or five feet wide at the base, and I suppose it tapered towards the top some? A. Yes.

Q. Was it built all of rock, being on a cropping?

A. It was built of rock.

(Testimony of Dr. Jerome P. Porter.)

Q. Solid rock? A. Small rock piled up.

Q. No brush or dirt in it?

A. Well, no, I could not see any brush.

Q. Was there any stake in it? A. Yes.

Q. Please describe the stake?

A. Well, it is a pretty hard matter to describe the stake; it was just a post; I think it was two scantling nailed together, about 2 by 4 scantling nailed together.

Q. Two 4 by 4? A. Two 2 by 4.

Q. Two 2 by 4 nailed together? A. Yes.

Q. Were there any marks on the scantling?

A. Yes. South center post of the Dave Lewis Hope claim.

Q. The point we have been speaking about is number 6 on Mr. Carr's plat, now we will take point number 7, can you remember that monument in April, 1902?

A. That is the corner; you mean this one? (Indicating.)

Q. Yes, what would be the southwest there, number 7?

A. There was a little hole in the ground where I think some one had had a fire or done some little excavating; there was a post stuck up in that with rocks around it, but there was a little excavation; that was on the Mizpah claim.

Q. That is what I wanted to get at. How far was it upon the Mizpah claim?

A. Well, a couple of hundred feet, approximately.

(Testimony of Dr. Jerome P. Porter.)

Q. With reference to the Mizpah office, where was it?

A. Well, I don't know where their office is; has not their office been put up since then?

Q. What is your recollection about that?

A. Mr. Oddie's office then was over on Main street.

Q. Over on Main street in the town of Tonopah?

A. Yes.

Q. Was there no assay office on the ground in April, 1902?

A. There may have been, I don't know where it was.

Q. You know where the assay office is now, do you?

A. I know where the Douglas assay office used to be.

Q. You mean the one on the Valley View claim?

A. Yes.

Q. We are talking about the Mizpah.

A. I don't know where the assay office of the Mizpah was.

You know where the Lynch and O'Meara lease was?

A. Yes.

Q. Did they have a hoist there?

A. Yes.

Q. Can you describe how far this post was from the Lynch and O'Meara lease?

A. I could not give you an accurate description, no.
Court adjourned until Wednesday, July 13, 1904, at 10 A. M.

Court convened, July 13th, 1904, 10 A. M.

(Testimony of Dr. Jerome P. Porter.)

Cross-examination of Doctor PORTER (Resumed).

Q. Doctor Porter, I hand you a paper and ask you whose handwriting that is, if you know?

A. That is mine.

Q. And when did you write that?

A. When I was in Belmont, I think it was May 17th, I think that was the date.

Q. Of what year? A. 1902.

Q. In whose presence, if any one's?

A. In the presence of the County Recorder.

Q. Mr. Wharburton?

A. Yes, the young gentleman, junior.

Q. Did you leave this paper with Mr. Wharburton with that ink writing, that last at the end of the document, unaltered, and without erasure at that time, May 17th, 1902?

A. This was put on afterwards.

Q. I am just asking you about the ink writing at the latter half of the last sheet?

A. No, sir, this was all put on afterwards.

Q. Was that ink on the last half of the last page erased at the time you gave it to me Mr. Wharburton, on May 17th, 1902?

A. It was not there at that time.

Q. It had been erased before you gave it to him?

A. It had not been placed there at that time.

Q. It had not been placed there at that time?

A. No, sir.

(Testimony of Dr. Jerome P. Porter.)

Q. Now read the document, Doctor Porter, as it was given to Mr. Wharburton first, and we will get it straight that way.

A. Read it all through?

Q. If you please?

Mr. GOODWIN.—Understand his question: Read it as it was when you handed it to Mr. Wharburton first.

A. “Know all men by these presents, that the undersigned, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim by right of the original discovery, and the location heretofore made, such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by federal law and by the laws of the State of Nevada now in force, and local customs and rules, fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles and variations as allowed by law together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E. of mining locations, pages 123 and 124 Nye County, Nevada Records.” Then there was a blank left for the

(Testimony of Dr. Jerome P. Porter.)

pages in the District Recorder's books in Tonopah, that I had to fill in after I got over to Tonopah. And after an omission there of a certain number of lines to fill that in, it went on. "The name of this lode is Dave Lewis Hope. That date of this amended location is May 17th, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at this discovery monument there is claimed by me 1000 feet in a southeasterly direction and five hundred feet in a northwesterly direction along the course of said lode or vein. The general course of this vein is north 8 degrees west by south 8 degrees east. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center, and exposes the ledge at a depth of fully ten feet; the dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the act of the Legislature of the State of Nevada, approved March 16, 1897, and the amendments thereto, and of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee, deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bounds as follows, to wit:"

(Testimony of Dr. Jerome P. Porter.)

Q. Mr. GOODWIN.—That ended it, there was no description? A. No, sir.

Q. Mr. METSON.—Now after what you have just read these words appear: “Commencing at NW. Cor. Sec. Cor. common to Secs. 25, 26, 35, 36, T. 3 N. R. 42 E. bears N. 26 45 E. at the distance of 4965 ft. Monument of earth and rock, Marked NW. Cor. Dave Lewis Hope. Thence south 47 45 E. feet. 300 feet intersect south line of Valley View lode at its middle point. 600 feet NE. Cor. Monument of earth and rock marked NE. Cor. D. L. H. Thence S. 42 15 W. 750 feet E. center side, Monument of earth and rock marked E. center side D. L. H., 1500 feet SE. Cor. monument of earth and rock, marked SE. Cor. D. L. H. Thence N. 47 45 W. 600 feet SW. Cor. Monument of earth and rock marked SW. Cor. D. L. H.; thence N. 42 15 E. 750 feet W. center side, monument of earth and rock, marked W. center side, D. L. H. 1500 feet to place of beginning. Dave R. Lewis, Chas. J. Carr, Locators. Jerome P. Porter.”

Q. Now, the words that I have read appear to have been erased by pencil? A. Yes, sir.

Q. When were they erased?

A. Before they were handed in to the Recorder.

Mr. GOODWIN.—Explain that whole transaction, just how that happened.

A. Up to as far as I read it was handed to Mr. Wharburton, and recorded; and I told him that I was not familiar with the form of a survey of a mining claim,

(Testimony of Dr. Jerome P. Porter.)

and asked him if I should have the privilege of copying one from some of his papers there, he said, "Most assuredly, just copy anything you like," so I copied this, I didn't know whose claim it was, it was just to give me the form, so as I would know how to write out the field-notes of survey myself, but up as far as I read here, all that was recorded; that is all you will find of record in Belmont.

Q. Did you copy it in the notice you intended to file, and change your intention to file it with the County Recorder, and erase the words I have read?

A. No, sir; I had a typewriter with me in Tonopah, but not with me in Belmont; I intended to go to Tonopah, as I did, and typewrite this, and then correct my corners, which I did, and have it done properly. I just copied this as a matter of form and this was not to appear at all.

Q. You copied it as a matter of form, and then made those erasures, and then handed it to Mr. Wharburton?

A. No, sir, it was recorded before I copied it, and I just used that as blank paper to copy the form of the survey or field-notes.

Q. What was recorded before you copied it?

A. As far as I read, nothing further.

Q. You recorded as far as you read before you copied this erasure?

A. I just used that as blank paper.

Mr. GOODWIN.—Maybe I can make that clear to you; it took me quite a while to understand it. He

(Testimony of Dr. Jerome P. Porter.)

went to Belmont with that paper prepared as far as he read, without any description; he handed that skeleton to the recorder, which the recorder recorded, the skeleton as presented; his intention was to go back to Tonopah and get a description of his property, he sits down in the Recorder's office, getting a form of the proper description of a mining claim, and takes that copy from some location that was there; he goes back to Tonopah, gets the description of his own claim, comes back with that description to the Recorder, then that description and the balance of the certificate of location is placed upon record, and that is the certified copy that we offered in evidence.

Q. Mr. METSON.—Now, Doctor Porter, you told me that you wrote this entire document at Belmont, and it is all in your own handwriting.

A. Let me show you on another page back here.

Q. I am speaking of the ink.

A. Oh, yes, the ink, that is right.

Q. You told me that you wrote that entire document?

A. Without my signature on the bottom; I didn't place my signature there, because it wasn't time for my signature.

Q. Let us understand it. Did you write this entire document in ink, as far as you read?

A. As far as I read.

Q. At Belmont? A. At Belmont.

(Testimony of Dr. Jerome P. Porter.)

Q. On the 17th day of May, 1902? A. I did.

Q. Now, did you at the same time write the matter in ink on this document that I read?

A. Later on in the day, towards evening; that was not handed in to the County Recorder.

Q. Now, I asked you a little while ago if you had written this matter I read, in ink, and had erased it before handing it to the County Recorder, and you said yes.

Mr. GOODWIN.—He didn't understand.

Q. I am asking now to make it clear, if I misunderstood you or you misunderstood me?

A. It was only handed to the recorder as far as I read, nothing further.

Q. Now then, go on and explain what was done there after it was handed to the Recorder?

A. I went back to Tonopah and got a correct description of the claim, the Dave Lewis Hope mine, then type-wrote the whole thing.

Q. I am speaking now with reference to what was done in Belmont after you handed it to the County Recorder, what was done there, if anything, either by the Recorder or by you, and tell us all?

A. All that I know is that the Recorder recorded what I handed to him, and left a space for the balance, I told him I would return with the balance completed in a few days.

(Testimony of Dr. Jerome P. Porter.)

Q. When did this matter in ink which I read to you get on this document?

Mr. GOODWIN.—He has already told you.

Q. I do not so understand it. I asked him what he did after handing the paper to the County Recorder at Belmont, and he says the Recorder recorded certain things in the book. Now I am asking after you had handed this document to the County Recorder and he had recorded it at Belmont, did you do anything else with this paper at Belmont?

A. Later on in the day, towards evening, I copied a form off one of his books, and used this for blank paper, if I understand correctly.

Q. Is that the matter in ink which I read to you a while ago, that you copied later in the day?

A. These field-notes I copied later in the day, after that was recorded.

Q. When did you erase those field-notes with pencil marks across the same?

A. I could not tell you.

Q. Now these field-notes that are erased are an exact copy of some form that Mr. Wharburton gave you at Belmont?

A. He didn't give them to me, he says "Just copy any of these field-notes of survey."

Q. And you did take the field-notes of some survey, and this is a correct copy of some field-notes in the Recorder's office?

(Testimony of Dr. Jerome P. Porter.)

A. I just made a hurried copy to get the form, I could not vouch for the correctness.

Q. As near as you could copy, it was a copy of what you took at the Recorder's office in Belmont that day?

A. Yes, placing no special importance to the copy, I just merely wanted a form.

Q. But you did endeavor to make a copy?

A. Yes, of course, if I had not had that idea in mind, I would not have copied it.

Q. It was simply a copy, that is all?

A. Just simply a copy of some field-notes.

Q. When did you return to Belmont again after May 17th?

A. Now, you are pinning me down to dates, and I would sooner you would refer to the papers, they are here. I could not say exactly the day; it is a couple of years back, I cannot remember the date.

Q. As near as you can?

A. It was just a short time afterward, a very short time.

Q. And what is your best recollection?

A. I won't mention dates, they are on the paper; the paper is in evidence, the amended certificate.

Q. The date on the amended certificate is the date that you next returned into Belmont?

A. Yes, sir; I am quite sure it is, and he interlined the initials there.

Q. Now, the date on this amended certificate seems

(Testimony of Dr. Jerome P. Porter.)

to have been changed, maybe that will refresh your memory.

(Hands paper to witness.)

A. I think that is the time I was there.

Q. If the dates on that record will refresh your memory any, explain please?

A. When I first went to Tonopah it was May the 17th, when I had the incompleated paper recorded, and when this completed paper was recorded, it was June the 9th, just about that time.

Q. It seems to have been May 21st there, from one of those dates, how do you account for that?

A. I could not tell you. This was the paper that was to be recorded, nothing else, that was just waste paper.

Q. After you returned to Tonopah, Doctor Portor, did you make any survey of the claim that you have been speaking about? A. I did.

Q. Can you tell us when you made that survey?

A. I didn't keep track of the dates; no, sir; I had a memorandum book in which I kept my expenses, and if I had known it was going to be called up I could have brought that book with me; it was a very few days after May 17th.

Q. Did you make the survey?

A. No, sir; it was made by a mining engineer, Mr. R. A. Vaughn.

Q. Did Mr. Vaughn and yourself put the stakes on the claim when you made the survey? A. Yes, sir.

Q. Who marked the stakes?

(Testimony of Dr. Jerome P. Porter.)

A. I marked them.

Q. And where is Mr. Vaughn?

A. He was in Salt Lake City the last I heard of him.

Q. When did you last hear from him?

A. About three or four weeks since; in fact, I didn't hear from him then; one of my attorneys heard from him.

Q. Just answer what you know, and we will get along better?

A. I have not heard from him for a couple of years.

Q. Your memory is good that he was with you and helped to make the survey?

A. He was the surveyor.

Q. Did you have any instruments?

A. Had a transit.

Q. Who carried the transit? A. He did.

Q. Who carried the stakes? A. I did.

Q. Who marked the stakes? A. I did.

Q. In whose handwriting were they?

A. In my handwriting, with indelible pencil.

Q. All nine of them? A. Yes, sir.

Q. How many times was this additional or amended certificate of location written in the records of Belmont?

Mr. GOODWIN.—I object as incompetent and not in cross-examination. The records are the best evidence.

The COURT.—That is true, but this matter is being tried before the court, and any point that is irrelevant when we come to decide the case will be ruled out, and

(Testimony of Dr. Jerome P. Porter.)

the objections will be noted and considered, when we come to them.

Q. Answer the question?

A. Well, there were two different dates, as far as I remember; the first day I was there, and the second day that I was there the article was completed on the book there.

Q. This paper that you read this morning, was not that written in the books on May 17th of 1902, in your presence? A. As far as I read, yes, sir.

Q. Now, this other certificate which has been marked in evidence here as Complainants' Exhibit No. 6, appears to be endorsed as of the date of June 9th; now, was that written in the books, or portions of it?

A. No, sir; he just compared that one original there, and I remember now of changing the wording of this a little, and he told me that it was unnecessary to change the wording, and that he would leave it as he had it on the books, and make the change on this.

Q. The record was amended to conform to this document, Complainants' Exhibit No. 6, is that right?

A. As it appears on the book, it is copied as this is interlined.

Q. Then the record that you saw made on May 17th was corrected and not rewritten to conform to this one?

A. No; this one was corrected; that that was on the book remained, and this one was interlined as corrected.

(Testimony of Dr. Jerome P. Porter.)

A. Well, how did the description which was omitted from that of May 17th get on the books on June 9th?

A. Because it was completed; I completed this at that time; at first it was an incompleated article, and this was the completed article.

Q. Then the incomplete record was added to by putting in the description from this document, Complainants Exhibit No. 6? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And this complete document, Complainants' Exhibit No. 6, was not rewritten in full in the books, as if it were a new instrument? A. No, sir.

Mr. METSON.—We ask to have this document that appears to be endorsed "Recorded at request of Jerome P. Porter, May 17, A. D. 1902, in Book 'F' of Mining Locations, pages 141-2, in Nye County, Nevada Records," marked as an exhibit for the defendant.

(Paper admitted and marked Defendants' Exhibit "A.")

Q. How many trips did you make to Belmont, Doctor Porter?

A. Well, all told, several, three or four; I think only two in connection with this.

Q. Only two in connection with this?

A. To the best of my recollection.

Q. How soon after completing the certificate did you go to Belmont with this amended certificate of location?

A. Well, I could not tell you the day; it was very soon afterwards.

(Testimony of Dr. Jerome P. Porter.)

Q. With reference to the photograph, Complainants' Exhibit No. 3, do you say all the flags that appear on the photograph represent monuments on the Dave Lewis Hope? A. No, sir.

Q. What one does not?

A. The east center post of the Mizpah.

Q. The east center post of the Mizpah?

A. Yes.

Q. And with what letter is it marked on the photograph there? A. "W. of C."

Q. Now will you indicate on the plat made by Mr. Carr where that post that you have marked "W of C." would be?

A. Well, it is just about there. (Marks point "12" on plat.)

Q. Did you measure the distance on the ground?

A. I did not.

Q. From the Mizpah post that you have marked 12 to the post 6 on the Carr plat? A. I never have.

Q. Did Mr. Vaughn in your presence?

A. No, sir.

Q. He never did? A. Not in my presence.

Q. Are there any other flags on the photograph there that mark any monuments other than the Dave Lewis Hope?

A. Our corners are marked here by letters, and any posts or photographs on here not marked by letters have nothing to do with our claim.

Q. I refer to flags?

(Testimony of Dr. Jerome P. Porter.)

A. There is one flag here that has nothing to do with our claim.

Q. Whereabouts is that place, describe it?

A. I will point it out to you. (Indicates on photograph.)

Q. The lowest one on the photograph. Just describe it?

A. I would sooner point it out; then there would be no mistake. It depends on which you mean as the lowest one, Mr. Metson.

Q. Well, mark it there. (Witness marks with circle.)

A. That has nothing to do with our claim.

Mr. GOODWIN.—Notice that, are you sure that has nothing to do with our claim? A. Sure.

Q. You are sure that has nothing to do with the Dave Lewis Hope claim? A. Yes.

Q. When did you say you were back on the Dave Lewis Hope claim after November, 1901?

A. That was in April.

Q. What kind of post was at the point marked 12 at that time?

A. Well, you mean the east Mizpah post, or the one I just marked 12?

Q. The one you just marked 12 on the Carr plat?

A. Well, it is pretty hard for me to describe a post of another mine; to the best of my recollection the earth was built up square around it, and there was a mound of rock with a post in it; that is the best of my recollection.

(Testimony of Dr. Jerome P. Porter.)

A. Yes, sir.

Mr. GOODWIN.—If your Honor please, we now offer a certified copy of the adverse, etc., with the plat, and certificate by the register.

The COURT.—Is there any objection?

Mr. Metson.—No objection, except the objection that we do not think the adverse is sufficient. The objection is that the adverse is not sufficient in form; it is a certified copy; we want to make a protest to that.

The COURT.—Your objection is not that the adverse if sufficient in form is not sufficient?

Mr. METSON.—I am not sure about the time. Our objection would be that it is not in time, and that it is not sufficient in form. The point is, that it has not a sufficient plat showing the adverse, made by a surveyor competent to make the same. We want to look into that.

(Paper admitted and marked Complainants' Exhibit No. 7.)

It is admitted that the first publication of the application for patent was on the 19th of September, 1903.

Mr. GOODWIN.—We offer in evidence the deed of Charles J. Carr to Thomas W. Chandler and Mary Thompson, of date the 12th day of April, 1902, and conveying an undivided one-fourth interest of, in and to, that certain mining property known as and called the Midway Mining Claim, situated, lying or being in Tonopah

(Testimony of Dr. Jerome P. Porter.)

or Butler, in the County of Nye, State of Nevada; also an undivided one-fourth interest of, in and to, that certain mining claim known as and called the Dave Lewis Hope Mining Claim, situate, lying and being in Tonopah or Butler, Nye County, State of Nevada. It is duly acknowledged and recorded at the request of Mary Thompson, April 18, 1902, in Volume "O," of deeds, pages 563-4, Nye County Records. W. Brougher, County Recorder.

(Deed is marked Complainants' Exhibit No. 8.)

Mr. METSON.—Put in all those documents, and we will look them over, and if we have any objection we will make it later.

Mr. GOODWIN.—The next deed we offer is from C. J. Carr to Thomas W. Chandler, of a one-quarter interest in the property affected. This deed is dated May 8, 1902, and recorded in Volume "O" of deeds, pages 563-4, Nye County Records.

(Deed marked Complainants' Exhibit No. 9.)

The next deed is from David R. Lewis to Jerome P. Porter, dated May 15th, 1902, a bargain and sale deed of the Dave Lewis Hope claim, and this deed is recorded in Volume "O" of Deeds, pages 576, 577, Records of Nye County.

(Marked Complainants' Exhibit No. 10.)

The next deed is of date June 14th, 1902, between Thomas W. Chandler and Mrs. Mary Thompson, both of Berkeley, California, the parties of the first part, and

(Testimony of Dr. Jerome P. Porter.)

Charles J. Carr and John G. Jury, the parties of the second part, reconveying to Carr and conveying to Jury, portions of the property in dispute. Recorded November 11, 1902, in Book "P" of Deeds, pages 513-15, Nye County Records.

(Marked Complainants' Exhibit No. 11.)

The next deed is of date May 23, 1902, from Jerome P. Porter to Thomas W. Chandler and Mary Thompson, of an interest in the property in dispute.

(Marked Complainants' Exhibit No. 12.)

From all of which conveyances I think your Honor will find it places the title in certain proportions in the plaintiffs in this action.

Doctor JEROME P. PORTER, recalled, testified as follows:

(By Mr. GOODWIN.)

Q. Doctor Porter, when you were on the Dave Lewis Hope claim, about the middle of May, as you testified, or the latter part of April, from the latter part of April to the middle of May, did you see there what purported to be a copy of an attachment in any action in which Lothrop and Davis were plaintiffs and Charles J. Carr was defendant? A. I did, yes, sir.

Q. How many of those notices did you see?

A. Two.

Q. Where were they situated?

A. One was on the south center post.

(Testimony of Dr. Jerome P. Porter.)

Q. The south center post as indicated by yourself and Mr. Carr on that diagram? A. Yes, sir.

Q. And where was the other situated?

A. The other was on the ridge of the hill; I could describe better by a photograph.

Q. Well, you may describe it by that photograph. Indicate on that approximately where the other was posted? (On Complainants' Exhibit No. 3.)

A. How will I mark it?

Q. Mark it "C. A." that would be "Carr attachment." (The point is so marked on Exhibit No. 3.)

Q. Did you have the course between the south center post and the post on which that attachment was situated, taken?

A. Almost due north and south, a little—

Q. Answer my question: Did you get the course between the south center post and the post on which that attachment was? A. Yes, sir.

Q. What was that course?

A. Almost due north and south; a little west of north.

Q. Do you recollect how much west of north?

A. Eight degrees by the transit.

Q. Did you notice what marks were on these posts that these copies of attachments were placed on?

A. They were just the regular attachment notice, as published by the constable.

Q. Independent of the notices attached to these posts, did you notice how the posts themselves were marked?

(Testimony of Dr. Jerome P. Porter.)

A. Yes, they were marked "Dave Lewis Hope Claim."

Q. They both were marked "Dave Lewis Hope Claim?"

A. Yes, sir.

Q. Did you talk with Mr. Lothrop about that attachment?

A. He spoke to me.

Mr. METSON.—I object to that as hearsay.

Q. Did you get those two copies?

A. Not those two; I left those there.

Q. Did you get two copies, or a copy of the notices?

A. Yes, sir.

Cross-examination by Mr. METSON.

Q. What post on the Carr diagram did you find attachment notices on?

A. Well, it was right close to this one, about there.

Q. Mark it please?

(Witness marks point on diagram.)

A. It was a thousand feet from the south center post.

Q. A thousand feet from the south center post?

A. Yes.

Q. Did you measure it?

A. I know from the stakes of my survey that I made of the claim.

(Witness marks point on plat "C. A.")

Q. What is the point on the Carr diagram marked No. 1?

A. I didn't draw that, Mr. Metson.

Q. Well, did you see that monument there when you were there in April, No. 1?

(Testimony of Dr. Jerome P. Porter.)

A. I saw a monument there.

Q. About how far was it from point "C. A."?

A. It was right at "C. A."

Q. I am asking you about point No. 1 on the Carr diagram; was there a monument at that point on the Dave Lewis Hope claim?

A. I did not see one there.

Q. When did you see the attachment notice at the point "C. A."?

A. Well, you are pinning me down to dates now; just a few days after I became interested in the claim.

Q. Was it in April or May, 1902?

A. It must have been April.

Q. It must have been April?

A. Yes; I cannot give you dates; the dates are on the attachment papers; you can get them easy enough.

Q. What was the size of the attachment papers?

A. A regular bill.

Q. Wasn't it more than one side of legal cap?

A. No; I am quite sure it was printed.

Q. Sir?

A. Well, I could not say for certain now. If you will allow me to explain. I took a copy of the copies down to Berkeley with me.

Q. I am asking you the size; was it a sheet the size of legal cap? A. I could not say as to the size.

Q. Was it larger, or shorter, or longer?

A. I think it was larger.

{Testimony of Dr. Jerome P. Porter.}

Q. And it was nailed on a board?

A. It was nailed on two posts on the Dave Lewis Hope claim.

Q. What was the size of those posts?

A. The south center posts was—it was a regular monument post. I am quite sure it was two scantling nailed together, two 2 by 4 nailed together, and the one upon the brow of the hill was in a monument of rock there, and it was three feet and a half out of the ground.

Q. When you put in your post, did you displace those posts? A. I put them right in the same places.

Q. Did you take out the old ones? A. No, sir.

Q. When you put in your stakes?

A. Put mine right in the side of them.

Q. You didn't displace them? A. No.

Q. Did you leave the attachment there?

A. Yes.

Q. You left the attachment papers there when you put your posts up in May? A. Yes, sir.

Mr. CHARLES J. CARR, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Carr, about the notice of location that you wrote, I am not sure whether you testified as to whether you wrote the notice of location first or last?

A. First, the first day, yes, sir; on the location monument I wrote the location the first day.

(Testimony of Charles J. Carr.)

Q. When you put up the location monument you wrote the notice of location?

A. I did; yes, sir.

Q. And put the notice of location in at that time?

A. Yes, sir, the same day.

Q. When did you put the tin cans in the monument?

A. On the next day.

Q. I say when, with reference to the notice of location? A. The first day.

Q. How did you date the notice of location, the day that you put up the location monument, or some other day? A. It was the 26th of August.

Q. Was that the date you put up the first location monument, August 26th?

A. Yes, sir, that was our location monument.

Q. Was there any other date to that notice of location except August 26th? A. No, sir.

Q. And any year date on it? A. 1901.

Q. 1901 was on it? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. In making the writing out at the time, do you remember whether or not you made any mistake in date, and erased the date and changed it to August 26th?

A. Not as I know of.

Q. You are sure the year date, 1901, was on that?

A. Yes, sir.

Plaintiff rests.

Mr. FRANK M. ISH, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. What is your full name? A. Frank M. Ish.

Q. Where do you reside?

A. I reside in Goldfield, Esmeralda County, Nevada.

Q. Were you in Tonopah in 1901? A. I was.

Q. Do you know of a location that has been designated as the Ivanpah? A. Yes, sir.

Q. Now go on and tell the Court what you know about the Ivanpah location?

A. I made the location myself.

Q. The date?

A. The date was on the 10th day of October, 1901.

Q. Tell the Court what you did with reference to locating?

A. I went to the district a few days prior to that, a month or such a matter, became interested, as all miners and prospectors do, in the development of the lode there, the ore, and like all the balance of the people interested there, got interested in the strike of the ore, where it went to, after it disappeared under the leases going east, and I learned from a workman in what is known as the Dority lease, that there was a cross vein in the Mizpah crosscutting the Mizpah lode; I secured admission into that lease, and went down and saw that there was such a vein that had a strike to the north, I then went on to the hill to ascertain, if possible, what ground could be obtained, either by location or other-

(Testimony of Frank M. Ish.)

wise, on the strike of that vein, and in doing so I went to the end of the Mizpah ground, and examined from there to the north and west. I learned that the ground directly—

Mr. GOODWIN.—Don't state what you learned, we object to that.

The COURT.—What you did.

A. I found, probably if the Court will allow me, I state this from what I learned. I simply state I had been informed that a claim known as Silver State had been located a few days prior to that time directly on the extension of the Mizpah, or nearly so, and the reason I name this is, that I did not, knowing of the fact, or presuming it to be a fact, I did not investigate that part of the territory, but to the west of that and to the north I looked for such a thing as vacant ground, and any other claims that might be in there; and commencing at the northwest corner of the Mizpah, I found that the ground immediately to the west had been located, and then following that out I went upon this ground and discovered a vein on the Ivanpah ground, where I made the location. In looking this ground over I went to every monument that was on the hill, that could be seen, commencing at the north end of the Mizpah—or the east end of the Mizpah, and going across the ground in a northwesterly direction, and whatever ground was vacant to the left of what I thought to be the Silver Star location. In making this investigation I found

(Testimony of Frank M. Ish.)

that the ground where the present Ivanpah location, or where the Ivanpah location was afterwards made, was, as I thought, vacant.

Mr. GOODWIN.—Right there; it is conceded, is it not, that the Ivanpah and the Dave Lewis Hope are practically the same ground?

Mr. METSON.—No, sir; not at all. They were not the same ground, and it is not conceded.

A. And I examined all of the monuments that I could see, of whatever nature or description was on that ground, and I found in my investigations, up near the top of Mount Oddie, I found the location post, discovery post of the Dave Lewis Hope claim; I found a monument probably 20 inches high, possibly two feet and a half across, or such a matter as that, a small monument of rock, and in that monument a small can, a baking powder can or something of that kind, with a removable top, and I took out and read the notice. This notice then claimed, if my recollection serves me right, five hundred feet northwesterly and a thousand feet southeasterly or northerly and southerly, if I remember right. I am not exactly positive of that, more than it was, I think, northerly or northwesterly and southeasterly. Knowing the latitude that prospectors take to get the directions and locations of a claim, I sought to the north for space that would indicate where his lines were, and I found none. I then went to the south again, and examined all the ground along on the line of the

(Testimony of Frank M. Ish.)

Mizpah, or about that point, which would take it about the required distance, and I found none there. There were no side monuments that I could find; and not knowing further about his ground, I located the Ivanpah.

Q. What did you do about the 10th day of October with reference to the Ivanpah; state whether or not you wrote anything; if so, what?

A. Yes, sir; I wrote out the location notice, claiming 700 feet northwesterly and 800 feet southeasterly, I think.

Q. Just tell the Court the facts. Did you do anything with this notice?

A. I wrote this notice and put it in a can, and placed it in the monument.

Q. What kind of a monument?

A. A stone monument about three or three and a half feet high, probably two feet and a half or three feet wide at the base, possibly it might have been four, I don't know that. It was a stone monument, however, placed on the vein that I discovered.

Q. Now state what you discovered, if anything, state fully to the Court.

A. Well, I discovered what I thought, and still think, to be a vein, an ore bearing vein. I thought at the time that it was ore bearing, and found afterwards that it did bear ore. It cropped, and in fact it is the only one that I ever found on Mount Oddie, that is what I would term to be a mineral-bearing vein. It cropped at the

(Testimony of Frank M. Ish.)

point of discovery about five or six feet wide, and then continued to the southeast for about 125 feet, where you could see the croppings extending above the surface for from a few inches to 18 inches high. This cropping was of a silicious porphyry, crystallized quartz; differed entirely from the riolite in which it was located.

Q. Where was the riolite with reference to the silicious porphyry?

A. The riolite composed the walls of either side. It was the country rock; the walls were composed of riolite.

Q. Where was the riolite with reference to this vein you were speaking of, if a vein?

A. On both sides of it.

Mr. GOODWIN.—I do not think there is any serious question between us that there is a vein in that ground, subject to location.

The COURT.—If he was going to make a location it would be necessary to say what he found. I do not suppose there is any contest.

Q. Was there any work done on this place where you put this monument?

A. Yes, sir, I did not do the work myself, but I employed Mr. L. O. Ray. He subsequently did the work. He did it about the first of December, by driving a cut into the hill which exposed the vein at a depth of ten feet, the cut.

(Testimony of Frank M. Ish.)

Q. Now, where was this discovery monument, or where did you put this monument in which you placed this notice, with reference to this work?

A. Well, it was some place about 15 feet away. The work was about 15 or 20 feet to the westward of where the monument was.

Q. Did you ever have any of that rock assayed?

A. Yes, sir.

Q. State to the Court whether it carried any gold?

A. I had two samples made, one I had assayed by Knapp & Luke, I think, if I remember correctly. One went four dollars and some cents, less than four dollars and twenty cents, and the other one went a dollar and something, I do not remember just what. I do not remember exactly, probably a dollar and some cents, a little over a dollar.

Q. What metals? A. In gold and silver.

Q. Were there any other monuments or marks put upon this ground at any time by anybody?

A. Yes; at the time of putting up the location monument, I built at the northwest end—I would state to the Court that I naturally have always been somewhat confused about the direction of the Mizpah lode there, the north and south direction; my natural direction has always been a little bit off there, so I have got to stop and recall it; but it was on the north end or northwest end of the claim, I put up the corner monuments; the northwest corner was situated very close to the location of the North Star tunnel site.

(Testimony of Frank M. Ish.)

Mr. GOODWIN.—What was that, I did not understand?

A. I say the northwest corner was situated a few feet below the location site of the North Star tunnel site.

Mr. GOODWIN.—Q. That is the tunnel on the other side of the hill?

A. That is the tunnel running through the mountain from the north.

Q. That is not the present site of the North Star shaft?

A. Oh, no. And then I built the southwest corner 600 feet, to the southwest of this one I speak of. Those two constituted the corners, and then I built the southwest side center, and the northeast side center; the east end of the claim, or the southeast end of the claim, the two monuments I did not put up until some time in December.

Q. December of what year? A. 1901.

Q. Now, will you describe each one of those monuments fully and carefully, one by one?

A. Yes, sir, the northwest corner near the North Star tunnel site was composed of stone, and it was a large stone that was sticking in the ground. I piled rock over that, making just simply an ordinary monument of stone, with this large one sticking in the ground, and I made that probably four and a half feet on the bottom, with the aid of this big stone, and made it three

(Testimony of Frank M. Ish.)

and a half feet high; that monument was all composed of stone, as I speak of it, and I marked it with a stake, a piece of box that I secured down town and broke up, and put in all of these monuments, just a small strip of box, marked the "Northwest corner, Ivanpah claim." The southwest corner I built up of stone, simply piled up on the ground a number of stones and I made it about three feet high, but the width of it I do not know, and I marked that.

Q. What is your best memory as to the width?

A. I really do not recollect what it was more than it was possibly— I do not know, I could not say for certain, but probably three and a half, might have been as high as four and a half feet wide, but of that I do not recollect. Now, the southwest side center was down on the slide rock on the side of the hill, and I simply pulled a lot of this together and made a mound probably three feet high, and marked that the same way. The northeast side center is composed of small stones and piled up, just an ordinary monument, and marked the same way as the others. The southeast corner that I put up afterwards in December was an old monument that had been built, evidently had been built, at least I think so, from a large stone that was partially sunk in the ground, and kicked down, and the rocks scattered about. I used that and rebuilt it of the same material, and made it a large monument, probably five feet across the bottom and three feet and a half high, quite a large one. The northeast corner I built in the gulch, a little

(Testimony of Frank M. Ish.)

draw. I built that of stone the same way. It was also set on the ledge, a part of the formation sticking out, and I built the monument around and over that, and marked that the same way as the others, simply marking a small board and sticking it in there, whichever corner it might be.

Q. About how many monuments were builded by you from October 9th until the first day of January, 1902?

A. I built the location monument, and six other monuments, the four at the corners and the two side centers.

Q. State whether or not marks were put in some, each, or all of them?

A. I put marks in all of them.

Q. Indicating what, what were the marks?

A. The marks indicated the respective corners of that claim; the northwest corner was marked "Northwest corner Ivanpah"; the southeast corner was marked "Southeast corner Ivanpah"; the southwest side center the same; the southeast corner the "Southeast corner Ivanpah"; and the northeast corner the "Northeast corner Ivanpah."

Q. State to the Court how many times you were on that mountain during the year 1902, subsequent to October the 8th say?

A. I think I went on the hill on the 9th first.

Mr. GOODWIN.—The 9th of October?

(Testimony of Frank M. Ish.)

A. The 9th of October, and then I went on again the 10th.

Q. How long have you lived out in that Tonopah country?

A. I have lived there since about the 25th of August, 1901, preceding that.

Q. State whether or not there was any excavation in the nature of a cut on that ground in October, 1901, when you went there?

A. No, sir, there was absolutely not a breaking of the surface, not a pick point that was visible for a distance of a hundred feet anywhere within the confines of what was then located as the Ivanpah claim.

Q. Was any work done within the limits of the Ivanpah claim subsequent to October 8th or 9th, 1901, other than this work that you speak of Mr. Ray's doing?

A. No, sir, there was none done, not a particle.

Q. Now, as to 1902, was there any work done within the Ivanpah by anyone?

A. Yes; some time in the month of February, now, I don't know the date. I at that time had charge of a property at a place called Weepah out at Lone Mountain, and employing a number of men, it was necessary for me to go into town very often, that is quite often, sometimes once a week, and sometimes once in two weeks, or oftener; I do not remember the dates, but on returning from one of these trips, I saw that an excavation had been made on the side of the mountain, at

(Testimony of Frank M. Ish.)

a point where, very near where the present location of the North Star shaft it. It was new, and I discovered it, as I say, from a long distance, the breaking of the surface of that hill you can see for long distances; it was plainly visible from the town.

Q. What was the nature of the ground with reference to showing excavations and displacements of any materials on the surface?

A. Well, the face of Mount Oddie, the south face of Mount Oddie faces the town, and it is in plain view, for a greater part of the south face. There was, in fact, I do not know of any spot, unless it would be a very small one, but what you could see the entire thing from the streets of the town. Now, the material itself, the riolite on top of the hill, is of a burnt brownish color, inclined to black, a great deal of it, shining black some of it; it apparently is a sunburn or staining or coloring by the heat of the sun. You break that and it discloses a white and light color, and it was the same in this case.

Q. Suppose an excavation of two or three feet deep, and three or four feet long or wide, should be made on the face of Mount Oddie, would it disappear in two or three days, or a week?

A. No, sir, it would be there yet, if it was made years ago.

Q. Take this location point where you put your notice of location, and tell the Court where this tin can

(Testimony of Frank M. Ish.)

in which you found a notice of location of the Dave Lewis Hope claim was?

A. Do you want it indicated on the plat?

Q. No, tell the distance, describe it to the Court, if you can.

A. This notice of the Dave Lewis Hope claim was, as I say, in a small monument on top of the ridge, and near the apex of Mount Oddie, on the west slope. The mountain has, as some might term it, a hog back, that is, a ridge like that runs down there; it was up on that ridge, as I say, near the apex of the mountain. I could not tell the distance, but from the present location of the North Star shaft, it must have been five or six hundred feet, or is to-day, where that monument is yet to-day, is up on top of the hill five or six hundred feet. I never took the measurements, but that is my recollection.

Q. Now, will you take this piece of chalk and go to the blackboard and assure me that the point is the location monument that was marked "Dave Lewis Hope," will you please lay out the Ivanpah?

A. And using this diagram on the board for about the same size?

Q. Yes, make it about the same size. About 1500 by 600, assuming that.

(Witness draws diagram.)

A. I would mark the discovery of the Ivanpah at a point about there. (Indicating.)

(Testimony of Frank M. Ish.)

Q. About how many feet is that from the point 1, being the Dave Lewis Hope location notice point?

A. Well, that will exceed 400 feet, just how much I do not know. At about that time I took a measured stick, my recollection of it, it was about 12 feet long by the plumb-bob; going up over the hill here, from this point to this point, is quite steep; in order to get some idea of the distance from this point to this point, I took a plumb-bob, a 12-foot stick, I think it was a 12-foot stick, leveled it from point to point to obtain as nearly as I could, the exact distance from this point to this.

Q. From point "X" it is quite steep to what point?

A. To the point marked "1."

Q. Please designate by the letter "O" where the work was done by Mr. Ray?

A. The work done by Mr. Ray relatively, it would be right in there.

Q. A little west?

A. Yes, it may be a little higher, but it would be very close to the monument.

Mr. GOODWIN.—That diagram was drawn from the cut described by the witness as being 45 feet north of the shaft; Mr. Carr having drawn that diagram from that center or base, this is simply confusing unless they use the same. We do not propose this shall go to the court as representing the situation there on the ground.

The COURT.—I do not understand that. They are

(Testimony of Frank M. Ish.)

taking that as being correct. Of course if it is not correct we will get it straightened out, whatever it may be.

Q. Now, from that point please lay out the various corners of the Ivanpah Claim?

A. The side center at a point about here, or near there, another side center down here; and then the northwest corner was 700 feet; this one extended 700 feet, and this was 800 feet is my recollection; that is relatively about where they were, that is my recollection, using this as the location point of the Ivanpah.

Q. Mark the exterior boundaries, if you please, the end lines and the side lines.

(Witness marks boundaries as requested.)

Q. Designate those corners as they were marked on the ground?

(Witness marks the corners and side lines.)

Q. Now, will you indicate there where you say this cut or dump rather, was made after the first of 1902, when you were going back and forth to Weepah, you say?

A. Some place about near this line in here, from that side center over, I should say, down in here some place. (Indicating.)

Q. Mark it "B. L. Cut."

(Cut so marked on diagram.)

Q. Assuming that the white lines as made by Mr. Carr are the lines of the Dave Lewis Hope Claim, where would the dump made when you were going back and

(Testimony of Frank M. Ish.)

forth to Weepah be, inside of those white lines or outside of them? A. Using this as a basis?

Q. Using the white lines as a basis, was the work inside of the white lines, or outside, not using the diagram in blue chalk at all.

A. Well, I have got to think; I believe it would be clear outside of their lines.

Q. About how many feet would it be from the point where you found the Carr notice?

A. Well, the Carr notice was found on top of the ridge at this point here "1," that is, I assumed that in making this map, that that is the point marked "1" and I made this to start on, using this as a starting point.

Q. Using that as a starting point, how far outside or inside of the westerly side line of the Dave Lewis Claim, would that dump be?

A. It would be well without it.

Q. About how many feet?

A. Why, I should say not less than between fifty and a hundred feet.

The COURT.—Not less than fifty to a hundred feet outside of the line?

Q. I think so, using this point here at which the Dave Lewis location notice was posted.

Q. Did you make more than one copy of the notice of location that you posted on or about the 10th day of October, 1901?

(Testimony of Frank M. Ish.)

A. My recollection of it is that I did.

Q. Do you know what was done, if anything, with the copy?

A. Yes; I was not in Tonopah regularly, and I gave this notice to a friend of mine, Mr. George Croslett, and asked him to have it recorded, which he did; that is, subsequently I learned that it had been.

Mr. METSON.—We offer now a certificate of location of the Ivanpah made by F. M. Ish on the 10th day of October, 1901.

Mr. GOODWIN.—Have you a notice of location in addition to this?

Mr. METSON.—It is a copy of what was posted on the 10th day of October.

Defendant's Exhibit "B."

CERTIFICATE OF LOCATION.

State of Nevada, Nye Co.

Know all men by these presents, that I, F. M. Ish, have this 10 day of Oct., 1901, located 1500 ft. linear ft. on the Ivanpah lode or vein or deposit together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. northerly from center of discovery monument. Situated Tonopah Mining District, Nye Co., State of Nevada, to wit: The south end of this claim adjoins the north side line of the Mizpah mine and crosses a portion of the east end of the Lucky

(Testimony of Frank M. Ish.)

Jim, is situated on the west and northwest slope of the high hill northeast of the town of Tonopah known as the Oddie Peak. Filed for record Jan. 8, 1902, at the request of George Coslett.

T. F. EGAN,
District Recorder.

Recorded in Book C, page 32, of the Mining Records of Tonopah Mining District.

State of Nevada,
County of Nye,—ss.

I, R. C. Gordon, District Mining Recorder of Tonopah, Nye County, Nevada, do hereby certify that the foregoing is a true and correct copy of the location notice of the "Ivanpah" mining claim as the same appears of record in my office in Book "C," page "32" of the Mining Locations thereof.

Witness my hand and official seal this 28th day of June, A. D. 1902.

R. C. GORDON,
Recorder.

By W. B. Sollender,
Deputy Recorder.

(Marked Defendants' Exhibit "B.")

Recess until 1:30 P. M.

(Testimony of Frank M. Ish.)

After Recess.

Direct Examination of Mr. FRANK M. ISH (Resumed).

Q. Mr. Ish, I think I asked you to describe the work that was first done within, we will say 1500 feet southerly, or within a thousand feet southerly, either southeasterly or southwesterly of where you say you saw the notice of the Dave Lewis Hope location signed by Carr and Lewis?

A. The first work that I saw after this, after seeing the notice?

Q. Yes, the first work you saw?

A. Was the cut that was driven into the hill there, a point very close to the present location of the North Star shaft.

Q. North Star tunnel?

A. Shaft; there was no other work done on the hill that I recollect of until some months after, late in the summer of 1902.

Q. Wasn't there some work done there at some time after October 10, 1901?

A. No, sir; there was no work done there whatever.

Q. You just said there was a cut run?

A. That was in the following spring. I said the first work that was done after my seeing the notice; I first saw that notice in October of 1901, and the first work that I saw on the ground, or that was done on that hillside, other than the Ivanpah location, was this cut

(Testimony of Frank M. Ish.)

that was driven in the mountain that I speak of, near the present North Star shaft.

Q. Now, describe to the Court the condition of the ground there on Oddie Mountain, on the southerly side of Oddie Mountain, or westerly side as to its being rocky with large boulders, or as to large trees, or as to brush, large bushes, or small bushes, or small trees, or sand; just give the Court a general description of the condition of the mountain.

A. Well, the mountain is almost one of solid rock; there is a little, but very little brush on it; there is a good deal of slide rock, but not large boulders, not in large pieces; there is, in places, considerable slide, other places the bedrock crops entirely out; there are no large or bold projections to speak of in the shape of rock, or otherwise, nor are there any very deep gulches. Running down by the northeast corner of the Mizpah, running in a direction from the top of Mount Oddie, down through by that corner, there is a gulch that has some depth, that you could not see into unless you would be right in the face of it, and it lays almost directly towards town, so that the entire face of the mountain appears to be—is capable of being seen from the town of Tonopah, from the streets.

Q. As to the work that was done by Mr. Ray, is that to be seen from town?

A. Well, it is just on the skyline of the hill, looking at the hill from most any part of town, it just appears about on the skyline, just on the western slope of it,

(Testimony of Frank M. Ish.)

that part of the hill does not face the town, it is some on the west slope, slightly to the west, southwest.

Q. Now, as to the point where the notice of location of the Dave Lewis Hope claim, was, how was that?

A. Well, that is over the ridge, slightly, that you can possibly see the top of by looking, it is a very small monument; it is just over the brow of the hill slightly; I don't know that you could see it; I don't believe you could see it from the town; it would be so little under cover, almost in sight, just under the brow of this ridge, under the apex of the mountain.

Q. What is the distance of that location, the Dave Lewis Hope mine, from the main street of the town, say about where the Golden Block or Butler Building is?

A. I should say it would be a little over 3,000 feet, I should judge so, by taking the Mizpah mining claim, the length of it, estimating that way, about a thousand feet beyond that, or such a matter, or a little over; I should say close to 3,000 feet from Main street.

Q. Now, take the North Star shaft, the present working shaft of the North Star Mining Company, is that in view or hidden from view in the main street in Tonopah?

A. It is entirely in view; in view for I think the entire distance of the street, I am quite satisfied as far up as the Gold Hill mine.

Q. And southerly?

(Testimony of Frank M. Ish.)

A. Southerly as far down as the stables there, or graveyard, anywhere down there you can see.

Q. How is it from Davis & Lothrop's store, the telegraph office and post office?

A. From there you can see plainly, there is nothing to obstruct the view.

Q. And Wells, Fargo & Company's office?

A. That is the same condition, nothing to obstruct the view from anywhere on the street at all.

Q. I understand you to say that at some time you began to go away from Tonopah on short visits, after October 10th, 1901?

A. Yes, sir.

Q. When was that?

A. It was in the spring, in the month of February.

Q. When did you first notice this work that you say was done some time in February in this cut?

A. Well, I don't know the date of it, I do not know the date exactly, I cannot recollect, but about those dates; it was sometime in the spring, and I went out to this town of Weepah, and it was about twenty miles out, and my business took me backwards and forwards, and it was on one of these visits, referring to the way I fix it, as much as anything else was, I think it was my second visit out there, and when I returned I saw this dump, what part of the month I do not know.

Q. What month could you say?

A. The month of February, 1902.

(Testimony of Frank M. Ish.)

Q. How far is the present main working shaft of the North Star from the Lothrop & Davis store, and Wells, Fargo's building, and the postoffice and the Butler building?

A. It is about 2,500 feet, I should say.

Q. Was there a smaller cut at the place where you say you saw this work done in February, was there a small cut prior to February at that place.

A. No, sir.

Q. Could it have been there and you not have seen it?

A. No, sir; it could not have been and I not have seen it.

Q. Now, as to your traveling back and forth over that country in the last part of 1901, were you or were you not upon this mountain or over this ground at any time in 1901, after October 10th?

A. Yes, sir; I was.

Q. State to the Court about how many times, if you were there more than once?

A. Well, I would not undertake to name how many, I do not know; after the putting up of this location notice I was over there, oh, I should say two or three times, might have been more; I know that I was there early in December, and went across and went over to the point of work where it was afterwards done on the Ivanpah, and then down to the North Star tunnel site, and returned the same way over the hill, instead of going around it.

(Testimony of Frank M. Ish.)

Q. You heard Mr. Carr testify here, did you not, as to a cut that was made on that hill sometime in 1901, by himself and Lewis? A. Yes, sir.

Q. You heard him describe where it was?

A. Yes, sir; I heard him describe where it was.

Q. How close did you go to that place in December of 1901, on this trip that you speak of?

A. I went almost over the spot where he claims it was located.

Q. How far is the tunnel line running from that point where Mr. Carr claims this work was done?

A. Why, it runs almost over, within 40 feet of it anyhow. The line of the North Star tunnel, you mean?

Q. Yes, the North Star tunnel.

A. Yes, sir; the North Star tunnel, the line of it runs within—the fact of the matter is, it is a good deal less than that, of where this cut afterward appeared; it is within five or six feet of it; that is the actual tunnel line as surveyed out.

Q. Was this tunnel line monumented or laid out on the ground at that time?

A. Yes, sir; it was in October.

Q. It was in October?

A. Yes, sir; that is, the monuments were there when I first went on the hill.

Q. Now, as to monuments or stakes other than tunnel monuments or stakes on that hill above the claims of the Butler Company, or Tonopah Mining Com-

(Testimony of Frank M. Ish.)

pany of Nevada; explain to the Court how many other monuments or stakes were seen by you?

A. I have not any recollection of seeing any stakes on that part of the hill except of Corona stakes, which was a claim that runs northwest, I think, I never had the course of the trail, but I think it runs northwest and southeasterly, and lay in at the bottom of the hill, which would be at the southwest of the present location of the Ivanpah; there was a stake or two in there, near the corner of the Mizpah, northeast corner; there was a bunch of stakes in there, or monuments rather.

Q. You have heard Mr. Carr testify that in August of 1901, he put up nine large monuments there on that ground, and put tin cans in each of them, and stakes in each of them; I will ask you whether or not at any time in 1901, you saw any monuments or stakes of the kind or character at the places described by Mr. Carr, except the one where you found the notice of location?

A. No, sir; I never saw them, and I know further, that if they had existed, I could never have helped but seen them.

Mr. GOODWIN.—I move to strike that out.

The COURT.—I will leave it in.

Q. Now state to the court, if you have not fully already, your opportunities for seeing monuments, and what search for stakes or monuments you made, if any, subsequent to the 10th of October or prior thereto, in the year, 1901?

(Testimony of Frank M. Ish.)

A. I made a search of that hill, as I explained on my first examination, when I first commenced to testify, that I searched that hill as thoroughly as I could search it I thought, so that I was satisfied of all parts of the ground, as to whether or not there were any locations that covered that ground, and I found no stakes or monuments, except the ones that I have now described; and I will say, however, one more, that was a monument that lay over behind the hill to the north of where the North Star shaft is, behind the hill; there was a monument there without any notice or mark of any nature or description, down over the hill.

Q. About how far off from this one on top of the hill where the notice of Carr and Lewis was?

A. From that it was probably two or three hundred feet, I should say, to the north of that.

Q. To the north? A. Yes.

Q. Is that what you said, to the north?

A. Yes, to the north.

Q. Do you know where the Indian Queen tunnel was there? A. Yes, sir.

Q. Where was that?

A. That was directly north of the apex of Mount Oddie, about 100 feet below the apex on the north side.

Q. And about what depth was that tunnel?

A. My recollection of it is that it was—the tunnel itself, after it got under cover, was about ten feet.

Q. After it got under cover was ten feet to the face?

A. Yes, sir; I think so.

(Testimony of Frank M. Ish.)

Q. As to stakes or posts marking the claims on the hill, when did you first see any there, other than the one that you have described up on top of the hill there?

A. I never saw any posts there until well along in the spring.

Q. Of what year?

A. In 1902; along towards—I cannot fix the time very distinctly in my mind, but it was some time, in my judgment, along in the month of May or June.

Q. Now, Mr. Ish, you know where the present claimed monuments of the Mizpah Intersection claim are, the Dave Lewis Hope claim originally, do you?

A. I only know one positively to identify it; I could only identify one, and the original discovery where the notice I have described was.

Mr. GOODWIN.—I understand the question to be as to the monuments that are now there, placed there in May; does the question go to that?

Mr. METSON.—No, I mean at the present time.

A. I would like to have that question repeated again.

(Question read.)

A. Why, I do not know that there are any of them standing now, I could not say.

Q. Did you ever go up on this mountain with Mr. Booker? A. No, sir.

Q. Do you know the location commonly known as the "Favorite"? A. Yes, sir.

Q. What is that?

(Testimony of Frank M. Ish.)

A. The southwest corner of the Favorite is about, oh, some places a hundred feet southwest of the apex of Oddie mountain; the southeast corner is well down toward on the other side, somewhat close to the mouth of the Gordon and Hudgens tunnel, on the east side.

Q. With reference to the southeast corner of the Favorite, where was this monument where you found the Dave Lewis Hope location notice?

A. From the southeast corner?

Q. Is that the nearest corner?

A. No, sir, the southwest corner of the Favorite.

Q. The southwest corner; about how far is the Dave Lewis Hope monument, where you found the notice, from the southwest corner of the Favorite?

A. Well, that would be hard for me to say just how far.

Q. If you cannot tell, don't guess it?

A. It would be hard for me to estimate what that distance is.

The COURT.—Approximate it, to the best of your recollection and judgment?

A. I would say somewhere around a couple of hundred feet, it might be more or less.

Cross-examination by Mr. GOODWIN.

Q. You say the stakes that you saw there on what we call the Dave Lewis Hope claim, were first seen by you sometime in the month of May, 1902?

A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. That is, in the month of May, 1902, you did see stakes which marked what we claim now to be the Dave Lewis Hope claim, didn't you?

A. I do not undertake to say definitely about that date, but it was in the month of May or June.

Q. In the month of May or June, 1902?

A. Yes.

Q. How many stakes did you see?

A. I never remember of seeing any that I knew was marked as the Dave Lewis Hope stakes except one.

Q. Where was that situated?

A. That was situated down near the center of the Mizpah claim, the Tonopah Company's ground, not far from the line of the lease.

Q. Was it down near the point marked 6 on this diagram of Mr. Carr's, these points here marked 10 and 12 being two points placed by different witnesses, as representing the situation or location of the Mizpah center stake?

A. Well, it was very—I could not undertake to locate it from that; I can describe it to you with reference to the northeast corner of the Mizpah claim.

Q. Take the center stake of the Mizpah.

A. Well, I do not remember to have ever seen such a thing; I do not know whether they have got such a thing or not, the east end center, I do not know that they have.

(Testimony of Frank M. Ish.)

Q. Well, how is it with reference to the northeast?

A. The northeast, it would be, oh, about south or southeast from that, a distance of about, probably it would be 350 feet, it might be a little bit more, about that, I think.

Q. You don't mean to say that it was not close to the east end center, if there was such a stake, of the Mizpah?

A. No, I do not know of any place that is called—I never knew of a stake called the east end center of the Mizpah; if there ever was one, I never saw it.

Q. Do you recognize that photograph, Mr. Ish, the general locality?

(Hands photograph to witness.)

A. Yes, sir.

Q. What is this building here? (Complainants' Exhibit No. 3.)

A. Well, I cannot make that out, what that is; that would seem to be a building on the—yes, that is the company's house.

Q. Do you know what dump that is over on the left-hand side of the picture?

A. Yes, sir; that was the last dump that produced ore on the Mizpah.

Q. Do you see two small points?

A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. Do you recognize either of those as being the stake which you say you saw marking the south center of the Dave Lewis Hope?

A. I didn't say that I saw one marking the south; the only one I saw was right in here, in about that dump, on the trail, and went up over the Mizpah there.

Q. Could it have been there? (Indicating.)

A. I do not think so; I think it stood in here, very near to this dump.

Q. Is not that very near to that dump?

A. It does not seem so to me.

(The witness points to the post marked "C. E.")

Q. The one you saw was in that neighborhood, there, wasn't it? A. Yes, in the neighborhood.

Q. How was that marked?

A. I don't remember any lettering on it except the Dave Lewis Hope.

Q. Well, didn't you at that time investigate for other stakes? A. I did not.

Q. Why not?

A. For the very good reason that I did not think the Dave Lewis Hope claim existed long since.

Q. You went on the ground and found that stake?

A. Yes. ..

Q. Did you look for any other stakes?

A. I did not at that time.

Q. Did you subsequently?

A. I subsequently have been over the ground.

Q. Looking for stakes?

(Testimony of Frank M. Ish.)

A. No, not necessarily.

Q. When you went over the ground did you see any other stakes that marked, or professed to mark, the exterior boundaries of the Dave Lewis Hope?

A. I don't think I ever did, any other stake.

Q. So that is the only stake you ever saw in that locality or neighborhood, or on that side of the mountain, excepting the original stake that you described up on the ridge, that professed to indicate the boundaries of the Dave Lewis Hope claim?

A. That is the only one that I definitely know; I will state I never went over the ground subsequently to that time particularly looking for stakes.

Q. Don't you think if there had been eight or nine stakes there in June, marking the several corners, marking the side lines, that you would have seen them?
ing the discovery and marking both centers, and mark-

A. I would have seen probably some of them; there is no question in the world but what I did see stakes that might have been marked Dave Lewis Hope.

Q. If you did, cannot you tell the court where they were?

A. I do not know, sir; I did not make any particular examination.

Q. You didn't pay particular attention to them?

A. I will answer that I made no examination of posts to so identify them; I did see this post and I can give you an accurate description of it.

(Testimony of Frank M. Ish.)

Q. But as to the others you made no search and can report no information as to any other posts?

A. Not marked Dave Lewis Hope, no sir.

Q. Even at that late day? A. No, sir.

Q. You were first on that ground October 9, 1901?

A. Yes, sir.

Q. You went back again the next day?

A. I think so.

Q. What did you do on the 9th?

A. Oh, I went up on the hill; I went to the Dority lease; the Nevada City boys lease, as I understand it.

Q. Was that one of the Mizpah leases down in the flat?

A. Yes; I went into that mine that morning, and looked at that vein; that I had been informed—

Q. Never mind; you went through that, your reasons for going I do not care about? A. Yes.

Q. After you left the lease and went up onto the mountain, what did you do before coming down?

A. I went up to size up the ownership of the ground that was owned, who owned it.

Q. That morning you understood that the ground down there by the Mizpah was owned and located?

A. Yes; parts of the ground, to the west and to the east.

Q. Didn't you understand that the ground north and west of what you subsequently located as the Ivanpah was located ground?

A. Please repeat the question?

(Testimony of Frank M. Ish.)

Q. North of the Mizpah and west of what you subsequently located as the Ivanpah; didn't you understand that Mr. Butler had some locations in there?

A. No, sir; that was not the fact; I learned that there was a claim called the Silver State; it was an east extension of the Mizpah, had been located; and I also had been informed and had seen the stakes of the Lucky Jim and the Triangle, and of a claim called the Corona.

Q. You knew that the Lucky Jim was located there?

A. Yes, sir.

Q. And those others you have mentioned?

A. Yes.

Q. You understood that belonged to Mr. Butler?

A. I did not say I understood that, as they did not at that time.

Q. To whom did they belong?

A. To Mr. Clifford.

Q. Didn't Butler have an interest in them?

A. I did not so understand that he did; I do not think it was a fact that he did.

Q. From the 9th up to the 1st day of February, how many times were you on that hill?

A. The 9th of what?

Q. The 9th of October, the date that you have just referred to.

A. I could not say, probably not less than, I would say, four or five, probably five trips that I took up there.

Q. Were you up the 9th and back the 10th?

(Testimony of Frank M. Ish.)

A. Yes, and I was probably up there two or three times more.

Q. Two or three times more before the first of February? A. Yes.

Q. And during that time you saw no other stakes, nor evidence of work? A. No, sir.

Q. Excepting the stake that you discovered up there on the brow of the hill? A. Yes.

Q. Now, just describe that stake to me, will you please?

A. My recollection of it is that it was there the first time I went on the hill.

Q. And you saw that stake the 9th, did you?

A. My recollection of it is that I saw it then, and it was sticking in a small monument of rock, that was probably twenty inches high, and the stake was split at one end, partially split off.

Q. What was the size of it?

A. That was a 4 by 4; it was probably three feet long, probably three and a half, and it had the name, if I recollect right, Dave Lewis Hope.

Q. On the stake? A. On the stake.

Q. What else was there?

A. There was a can in the monument.

Q. And what was there in the can?

A. There was a location notice claiming the Dave Lewis Hope claim, signed by Dave Lewis and Charles Carr, their initials, I don't now recall; it was dated and the name of the claim was on it. I recollect about the

(Testimony of Frank M. Ish.)

notice that it had the appearance of having been redated.

Q. It had the appearance of having been redated?

A. Yes, redated.

Q. In what way?

A. August 26th had been rubbed out, and it had the appearance of a piece of paper that you would wet your finger, written with an ordinary lead pencil, and you would wet your finger and rub it over, and the date of August 26th was inserted or written over the top of this erased portion of the notice.

Q. You say it had that appearance?

A. It had that appearance to me.

Q. Did it have the general appearance of having been prepared by a miner?

A. Yes, I would say a miner.

Q. That is, a man not accustomed to handling a pen or pencil?

A. Why, yes, it had the appearance.

Q. Now, this is a photograph of Mount Oddie, is it?

(Complainant's Exhibit No 3.)

A. Yes, sir.

Q. Will you indicate on that photograph approximately, as near as you can, where that post was that you saw?

A. I cannot see any point now to fix any point for certain.

Q. Cannot you, by the contour of the hill, Mr. Ish, indicate on that photograph wher you found that stake?

(Testimony of Frank M. Ish.)

A. I can, approximately; it would seem to me to be about there.

Q. Just mark it there, mark it "C. A. I."

(The point is so marked on the photograph.)

Q. Now, will you indicate on there the point of your discovery, approximately?

A. Right on the sky there.

Q. Right on the skyline below that second knob?

A. Yes.

Q. Is it not possible that the post that you saw was at the point on the photograph marked "C. A." or in that neighborhood?

A. Well, I do not think it is possible that that could be the point.

Q. You never at that time took any particular pains to locate that stake, did you? A. Yes, I did.

Q. When did you next see that stake?

A. What time do you refer to, the next after what?

Q. You have described it when you first saw it; now, when did you next see it?

A. I saw it, I think, I am quite satisfied I saw it the second day.

Q. When did you ever see it again?

A. I saw it in a few days; I do not know just how many, just a few days after that.

Q. A few days after? A. Yes.

Q. When did you last see it?

A. Well, within the last—let me think; I have been

(Testimony of Frank M. Ish.)

to Goldfield for over six months; I don't believe I have been up there for six months.

Q. Have you seen it there since the middle of May, 1902? A. Oh, yes.

Q. You have seen it there since then? A. Yes.

Q. How many times since then?

A. Well, that would be a very hard thing to say.

Q. Haven't you seen it a good many times since the 17th of May? A. Yes, a number of times.

Q. Would you say you have seen that post five times since the 17th of May, 1902?

A. I think so, without any question, I have seen it that many times.

Q. How did you come to look at it? Were you with anybody?

A. I never recollect of having been there with anybody, although I may have been there with somebody.

Q. Why did you go so often to this post?

A. A good reason for a number of those visits was that I had men working at the Indian Queen location work, and as I had charge of them for the North Star Company I went by there a number of times.

Q. What other reasons?

A. That was sufficient, that I know of.

Q. Haven't you gone there several times to see whether or not that post was still remaining there?

A. I don't know that I ever did.

Q. You don't think that you ever did?

(Testimony of Frank M. Ish.)

A. I don't remember that I ever went there for that direct purpose.

Q. How many times would you say that you have seen that post from the time you saw it on the 9th of October up to the time that you came into court?

A. Well, it would be hard to say the number of times; I have not any distinct recollection of visits up there, but I remember a number of times I was on the mountain.

Q. Ten or fifteen times, would you say?

A. Possibly that many; I don't know; I can only approximate.

Q. And the only other post that you ever saw was the one down there in the southeast corner of the Dave Lewis Hope?

A. Yes, to know; I never knew any other; I have seen other posts on the hill that appeared there afterward, that I didn't know, and never did know.

Q. Did you make any inquiry? Did you know who Dave Lewis was, when you went up there that day, the 9th?

A. I did not.

Q. After you came back did you make any inquiry to find out who he was?

A. I did in the course of a few days; I asked about Lewis.

Q. Did you find out who he was?

A. I found out he was a prospector, an old man.

Q. Did you look him up or get acquainted with him in any way, or ask him anything about his location?

(Testimony of Frank M. Ish.)

A. I did not.

Q. At that time you were familiar with the customs and rules of the district, and the State law?

A. Yes, in a measure.

Q. You knew at that time that Lewis had a certain length of time within which to mark his boundaries and perfect his location?

A. Yes; I knew it was ninety days in which to mark boundaries and do the location work on a claim.

Q. And you made no investigation or inquiry, none whatever, of Lewis, to find out whether he intended making the location, or perfecting it? A. No, sir.

Q. Did you, in December, when you had your work done? A. No.

Q. Before you went up there in December did you go all over the ground to see whether or not the stakes had been struck that you failed to find?

A. Yes, I went over the ground in December.

Q. Where did you go?

A. I think that my examination then was confined to going over from the Mizpah corner in that gulch, going up and taking about the line, as near as I then could locate it, the line of the Silver State, and going up over the top of the mountain, on the west side, and then crossing back to the line of the G. and H. tunnel, and returning by the North Star, that locality, and back over the hill.

Q. You say that notice called for 500 feet in a north-

(Testimony of Frank M. Ish.)

westerly direction and a thousand feet in a southeasterly direction? A. That is my recollection.

Q. Now, did you go out 500 feet in a northwesterly direction?

A. In a northwesterly direction; yes, sir; I did.

Q. And found nothing?

A. I found no monument or stakes, that is, I found the monuments of a line of the North Star tunnel, and the monuments on the G. and H. tunnel.

Q. You found monuments out there 500 feet?

A. Why, I found these monuments along the line of the North Star tunnel site.

Q. And you examined them and say they were applicable to that particular location? A. Yes.

Q. Did you go in a southeasterly direction a thousand feet?

A. Yes; I examined all of the monuments at what would be about that point.

Q. And found none?

A. I found lots of monuments.

Q. But none that were marked Dave Lewis Hope?

A. No, sir.

Q. Did you find any marked south center?

A. No.

Q. And southeast corner?

A. Well, of what?

Q. Just marked south center and southeast corner?

A. I did not; I don't remember that there was a monument there but what was marked what it was.

(Testimony of Frank M. Ish.)

Q. Now, in December you say that you did your work? A. About the first of December.

Q. That is, you employed it?

A. I employed Mr. Ray.

Q. What did that consist in?

A. It consisted in a cut running into the hill.

Q. What was the size of the cut?

A. I should judge it was about four feet wide, and run into the hill and cut the vein at a depth of about ten feet, that is in the direct face. There was about, I should say, fully eleven or twelve feet, probably eleven feet, from the top of the cut as it extended down to the bottom of the cut, the cut being somewhat of an adit, a little on the incline.

Q. When was that work completed?

A. I do not know, about that time sometime; somewhere between the first and fifteenth.

Q. When did you record your certificate of location?

A. Now, I really do not know.

Q. The 8th of January, didn't you?

A. I do not know.

The COURT.—If the certificate has the date on.

Q. It is the 8th of January. Now, had you recorded any notice of location, or anything of that sort, prior to the time that you filed that certificate of location for record with the district recorder?

A. I do not think so.

Q. That was the first filing that you made, was it?

(Testimony of Frank M. Ish.)

A. I think so.

Q. Did you intend that as your notice of location, and the filing of it the record, or did you intend that as your certificate of location under the State statute?

Mr. METSON.—I suppose his intentions are incompetent, the facts speak for themselves.

The COURT.—I suppose the notice will speak for itself. I think that would indicate what his intention was, that would be better than what he might say about it, but he may answer the question.

Q. Answer the question, Mr. Ish.

A. That the certificate of location I have been shown here to-day, you ask me if that was my intention when I made that out to be the certificate of location under the statute?

Q. Your certificate of location under the statute, or notice of location?

A. This must have been the certificate of location, it was to be so intended.

Q. Did you post a copy of this document that you have filed here on your claim.

A. I do not know that I posted a copy of that, but I posted a notice claiming the same points that are mentioned in there.

Q. Well, this was filed January 8th with the District Recorder, and February 8th with the County Recorder; now why didn't you describe the work that you had done on this claim in this certificate?

(Testimony of Frank M. Ish.)

Mr. METSON.—I object to that, it is asking for a conclusion.

The COURT.—Note the exception, and I will allow the testimony.

A. Why didn't I describe it in that?

Q. Yes?

A. I guess the best answer to that is that the certificate of location as filed, was recorded, was the one that was made by and filed by—whether it was made up by him or not, I don't recollect, but it was made up, I think, by Mr. Croslett.

Q. You were familiar with the State statute at that time? A. Well, I might have been, yes.

Q. And you had done your work? A. Yes.

Q. You gave him the data from which to prepare the certificate, did you not? A. Yes, I think so.

Q. Why did you not have the work you had done at that time included in your certificate?

A. I could not answer you why. It might have been an oversight possibly, or probably was, more than anything else.

Q. You did not recollect at that time that the description of the work was one of the principal elements in the certificate of location, did you?

A. Well, I do not think that I prepared it; my recollection is that Mr. Croslett prepared it, this certificate of location, from the original location notice itself, and recorded it for me.

(Testimony of Frank M. Ish.)

Q. Will you look that over and state whether or not it is in the form, as near as you can recollect, in which it was prepared by you, and filed with the District Recorder and County Recorder?

(Hands witness Defendants' Exhibit "B.")

The COURT.—He did not say it was prepared by him.

Mr. GODWIN.—Prepared as he has testified, I did not intend to misstate the testimony.

A. I think this is as near—this is a pretty close copy of the original notice.

Q. Now, that is what I am getting at. Is not that your original notice?

A. Well, I don't know as to details about it, whether it is or not.

Q. Is not that your original notice?

A. In a large measure it is.

Q. Point out there what there is contained in that that was not in your original notice; and is not that a certified copy of your original notice of location?

A. That is about the description, and I don't say but what that must be very, very close to the copy. I don't know that it is a copy, but it is very close.

Q. To the best of your recollection, you state that is a copy of the notice of location that you posted on your claim? A. Yes, very close.

Q. Now, look at this, and read it. (Hands paper to witness.)

A. Well, I have looked over this before.

(Testimony of Frank M. Ish.)

Q. What is that?

A. That was the certificate of location that was filed with Mr. Croslett, as I understand it.

Q. Now, let me read this and you follow there: "State of Nevada, Nye County. Know all men by these presents, that I. F. M. Ish, have this 10th day of October, 1901, located 1500 linear feet on the Ivanpah lode or vein, or deposit, together with 300 feet on each side of the middle of the vein, 700 feet running southerly, and 800 feet northerly from center of discovery monument."

A. There is the word "running" northerly here.

Q. Well, there is a difference, "running" is not in this. "From center of discovery monument, situated Tonopah Mining District."

A. Situated "in" Tonopah Mining District.

Q. This is just "situated Tonopah Mining District, State of Nevada."

A. "State Nevada," "of" is left out here.

Q. "To wit: The south end of this claim adjoins the north side line of the Mizpah mine, and crosses a portion of the east end of the Lucky Jim. Is situated on the west and northwest slope of the high hill northeast of the town of Tonopah, known as the 'Oddie Peak.' Filed for record January 8, 1902, at the request of George Coslett. T. F. Egan, District Recorder. Recorded in Book 'C,' page 32 of the Mining Records of Tonopah Mining District."

(Testimony of Frank M. Ish.)

A. "T. F. Egan, Jan. 8, 1902, at 20 minutes past 9 A. M." it is here.

Q. The endorsements are a little different. That is substantially the same as I have read from here, except two little words? A. Yes.

Q. On the head of what you have introduced here is "Certificate of Location," that does not appear on that certified copy? A. No.

Q. With that difference, then, the notice that you posted is identical with the certificate of location that you have offered in evidence, isn't it?

A. I do not think it is; yes, I think this one—I remember distinctly that the location notice was a printed form, and it was filled in; and it was printed, parts of it that does not appear on there.

Q. Didn't you record your notice of location?

A. I recorded a certificate of location.

Q. Didn't you record your notice of location in the District and County records?

A. Why, that is it.

Q. No, the notice that you posted on the ground, didn't you record that, Mr. Ish?

A. I recorded that certificate, and it is practically a copy of—

Q. I am not asking you that.

A. It is a copy of the original certificate of location.

Q. As a matter of fact, did you or did you not record a copy of the notice that you posted on that claim the 10th of October, 1902?

(Testimony of Frank M. Ish.)

A. Now, I will state that all I know about the matter is that that certificate there—

Q. Answer my question, please.

A. Is that that certificate there is largely a copy of the original notice as put on the claim by me.

Q. Now just answer my question: Did you or did you not record with the County Recorder and the District Recorder a copy of the notice that you say you posted on your claim the 10th of October, 1902?

A. I am perfectly willing to answer you. Here is the proposition; this thing was prepared, this certificate of location.

The COURT.—Did you record more than one notice?

A. No, sir.

Q. And that is the one that he has got, that you recorded?

A. Yes, sir, that is it. (Defendant's Exhibit "B.")

Q. That is what I am trying to get at, that this is the notice of location, and not a certificate.

The COURT.—And that is the fact, that he had but the one.

Q. You had but the one recorded? A. Yes.

Q. Now, prior to recording that, what had you done with reference to marking the boundaries?

A. I had put up the northwest corner, the northeast corner, the southwest side center, and the northeast side center.

Q. Didn't you state that prior to, or about the lat-

(Testimony of Frank M. Ish.)

ter part of December, you finished the markings by placing the stakes on the south end, and the monuments? A. Yes, on the south end.

Q. In other words, I understood from your testimony that prior to the first of January, 1902, you had marked all of the boundaries? A. Yes.

A. Had put up all the stakes and fixed the monuments, as you testified to?

A. That was my testimony.

Q. Why didn't you describe those monuments and those stakes and corners in your certificate of location?

Mr. METSON.—I object to that.

The COURT.—The same objection will go to all of this.

Q. Why didn't you do that?

A. As I say, I never prepared the certificate of location filed by George Croslett. The fact of the matter is, that I was away in Colorado.

Q. You were where?

A. Away in Colorado.

Q. When?

A. In the latter part of December, and January, the first of January; and I wrote to Mr. Croslett and asked him particularly to look after this matter, and make a certificate of record of this claim, and he did so, and he omitted to make any notice of the description in it.

Q. Didn't you know that the very purpose of allowing ninety days for the filing of a certificate of loca-

(Testimony of Frank M. Ish.)

tion was to enable you to mark your boundaries, and get your exact description and your preliminary work, and have those matters in such shape that you could describe them in your certificate of location?

A. In a general way, yes.

The COURT.—I think he has answered; he entrusted it to this man.

Q. You got back from Colorado when?

A. I remember coming to the State, coming into Reno on the first day of January, but I don't remember when I got back there exactly, it was some time in January.

Q. It was some time in January? A. Yes.

Q. When did you first see this work that you saw done there on the side of the mountain?

A. The work that was alleged to have been the Dave Lewis Hope location?

Q. Yes.

A. I first saw that work some time in February.

Q. Some time in February?

A. Yes, 1902.

Q. Will you indicate on that photograph, in pencil, the point at which that work was situated that you saw then? (Complainants' Exhibit No. 3.)

A. If the Court please, there is another picture of the same mountain, and I think it is a much more preferable one, it is a better view of it.

(Testimony of Frank M. Ish.)

The COURT.—Put it on there, as near as you can. It is all approximately.

A. The work itself; I think that must be the work there; I cannot see very well; I take it for granted that is the cut.

Q. Just mark that some way, mark it "cut"?

(Point marked "cut" by witness.)

Q. Where were you when you first saw that work?

A. I was on the road coming into Tonapah from Weepah.

Q. Into Tonapah from Weepah? A. Yes.

Q. That is, you saw it from the road?

A. Yes, sir; I saw it from the road.

Q. How long after you first saw it before you went up there?

A. I am unable to say for certain.

Q. Well, to your best recollection?

A. I should say a month, if I recollect.

Q. A month before you went up? A. Yes.

Q. How did you happen to go up then?

A. I do not recollect; but I went up with some of the North Star people.

Q. Some of the North Star people? A. Yes.

Q. That was about when, in March or April?

A. Well, it seems to me it was in April, I cannot recollect definitely about that.

Q. You think it was in April?

A. I think it was in April.

(Testimony of Frank M. Ish.)

Q. After you saw that there did you make any inquiry as to who was doing it? A. Oh, yes.

Q. What did you find out?

A. I found out it was being done by Dave Lewis.

Q. You found out that it was being done by Dave Lewis?

A. Yes, sir; or had been done by him.

Q. Did you find that out as soon as you back to town? A. Yes.

Q. And then you didn't go up to investigate for a month? A. I do not think I did.

Q. Then you went up with North Star people; by North Star people who do you mean?

A. Mr. Harris and Mr. Golden and Mr. Ray.

Q. Was Mr. Ramsey there?

A. I don't recollect, it seems to me that he was.

Q. When you got up there what did you find?

A. I didn't see that cut at all; that is, I never made a close examination of that cut at all except from down below, as I speak about, from down town.

Q. The closest examination you have ever made of that cut was from down town?

A. Hold on! You wait until I get through.

Q. I thought you were through.

A. I was going to say I didn't see that cut at that time for a month after it was dug, and when I went up there, I believe I was not up there until it had been squared, as has been described in the testimony here.

(Testimony of Frank M. Ish.)

Q. Then you didn't see the cut before the work that Mr. Porter testified to having done was done there?

A. No, only to see it was on that hill.

Q. You didn't go up to investigate that cut from the time you got back to Tonopah until after the 24th of April, if, say, that was done from the 24th of April on? A. I do not think I did.

Q. You stated that you saw that cut first as you came in on the road from Weepah? A. Yes.

Q. Well, when you found out that Lewis was doing work up there on a claim, did you make any further investigation as to the boundaries or stakes, or cut, and see him and have any talk with him? A. No.

Q. You knew that that was the ground that you were claiming at the time, did you not? A. Yes.

Q. And you recognized that that Dave Lewis was the same name, at least, as that attached to the notice that you found up there when you went to make your location? A. Yes.

Q. Why didn't you look him up?

A. I didn't think it cut any ice at all.

Q. You didn't think it made any difference?

A. No, I knew that he had not done the work within the time, from the 26th of August.

Q. Did you know when you came back and saw that work there, and learned that Lewis was doing it, that your certificate of location describing the boundaries,

(Testimony of Frank M. Ish.)

and your location work, had not been filed, and that your location was not then perfected?

A. Why, I knew that it had been filed.

Q. You knew that it had been filed?

A. Yes; this certificate of location that is here.

Q. If that is the notice of location, and not the certificate of location?

A. I said yes, that I knew that had been filed, was so informed by my friend and agent.

Q. If that was your certificate of location, you knew that you had not filed any notice of location, didn't you?

Mr. METSON.—That is argument.

The COURT.—He only filed one, and that is the only one, whatever that is.

Q. If you had only filed one paper up to that time, up to the time that you discovered that Dave Lewis was working on your claim, didn't you, as a miner, know that your location was not then perfected?

Mr. METSON.—I object to that; the Court is to pass upon this.

The COURT.—Show what was done, and then it will be the duty of the Court to determine whether he had complied with the law; whatever he might say, you would have to judge by his acts. I think the notice speaks for itself, as far as that is concerned, whatever it is.

(Testimony of Frank M. Ish.)

Q. When you came back and found Dave Lewis working on your claim or came back here, work had been done there, and you ascertained that Dave Lewis was doing it, did you then know that to locate a claim you had to post a notice of location, and record it with the County Recorder? A. Yes, sir.

Q. And did you not then know that you had ninety days within which to make the discovery, mark your boundaries and do your preliminary work?

A. Yes.

Q. Did you not know that then you were required to file a certificate of location describing your boundaries, as marked, and your preliminary work, as made?

A. On that thing I was not clear at that time.

Q. At that time you were not clear on that proposition? A. No.

Q. After you came back and found that Dave Lewis was working on your claim, did you look up or consult anybody to ascertain whether or not your title was clear and perfect?

Mr. METSON.—I object to that; it is hearsay and incompetent.

Mr. GOODWIN.—It is an act on his part. My idea was this: That if he knew there should be two instruments, a notice of location and a certificate of location, and he came back and found another man working on the ground that he claims now, and that he claimed to own, it would have been a natural thing for him to have

(Testimony of Frank M. Ish.)

taken advise, or inquired into the situation, and ascertained what his real title was.

The COURT.—It is what he did; what he did is the legal point that would control, in my view of the matter.

Q. When you went up there you say this cut had been enlarged and widened? A. Yes.

Q. How wide was it when you went up there?

A. Well, I would not undertake to say; it seems to me it was widened out simply, and a hole sunk in the center.

Q. Was it 14 or 15 feet wide, something like that, from 12 to 15 feet?

A. It seemed to me it was about 10 feet, I don't know, that is my recollection now; I think there was a hole.

Q. How big was that hole?

A. It was about 4 by 6 or 4 by 7, something that size.

Q. Couldn't it have been 4 by 8?

A. It possibly might have been.

Q. How deep was it?

A. It was about six feet deep, my recollection of it.

Q. Could it have been eight?

A. I do not think it was; I was down in it one time, and got out without any trouble; I do not think it was 8 feet deep, it might have been 7 though; I don't believe it could have been eight.

Q. Now, take that as the point of discovery for the Dave Lewis Hope, and the notice claiming ground running northwest and southeast from that point, just

(Testimony of Frank M. Ish.)

slightly west of north, and slightly east of south, 1500 feet, that is, 500 feet north and a thousand feet south, how would that compare with the ground that you claim as the Ivanpah? A. Well, it would run—

Q. Practically the same, wouldn't it?

A. Very much the same, except in the distances.

Q. What would be the difference in distance?

A. I claim 700 feet; it is either 800 feet north and 700 south, or the reverse perhaps, from my monument, and that would make quite a difference in the length, and the extent north.

Q. Maybe we can get it this way: Is not your south end line close to what we call and what we claim here to be the south end line of the Dave Lewis Hope?

A. I don't know where you put that.

Q. Well, you said you saw a corner down there that was the southwest corner?

A. Well, you go farther south than I did; that stake would be considerable farther south than I went.

Q. How much farther south?

A. Probably two or three hundred feet; I only went to the Mizpah corner, the corner on the side line, rather.

Q. Well, supposing our south center is at the Mizpah line, or very close to the Mizpah line, and our claim runs north and south, as I have described it, just a little west of north, and a little east of south, would not it then be practically the same ground as covered by the Ivanpah?

Mr. METSON.—I object to that; I think the proof is that the alleged Dave Lewis Hope trespasses upon the

(Testimony of Frank M. Ish.)

Mizpah about half way, and that the assumption is different from the fact proven by the other side, as I understand it. The Mizpah runs east and west, and these other claims practically north and south. I understood that the testimony in chief was directed to the point that the south end line of the Dave Lewis Hope was very close to the end center monument of the Mizpah; that would make it intrude upon the Mizpah, and within the Mizpah lines.

Mr. GOODWIN.—The only question arises from this: They say now that our starting point is way up there on the mountain, that is what they are claiming, which will carry our location farther east. I think there can be no difference between counsel on the other side and ourselves, that if the location of the Dave Lewis Hope was made as testified to by Mr. Carr, that it covers practically the same ground as the Ivanpah.

Mr. METSON.—About half.

The COURT.—We will probably get at it quicker by asking the questions. You may proceed.

Mr. METSON.—Do you offer this plat as being a correct plat of your claim?

Mr. GOODWIN.—As near as we can plat it from our description, but that was not made from an actual survey.

Q. Will you indicate on the plat that you have drawn, Mr. Ish, in blue, the location of the cut that you discovered, or have you located that? A. I have.

(Testimony of Frank M. Ish.)

Q. Will you locate now the hoisting works of the North Star?

A. The hoisting works of the North Star were right there. (Indicating.)

Q. The hoisting works of the North Star are south of that cut?

A. Pretty near south of the cut, a short distance; well, a little southeast, close to it, south about 40 feet.

Q. How far east from the Mizpah ground up to the hoisting works, in your judgment, the North Star hoisting works?

A. It is about 300 feet, I think, a little over 300 feet from the Mizpah corner.

Q. Not more than that?

A. Well, I just was thinking about how the claims laid in there, and trying to arrive at it from that; it is at the corner, the Lucky Jim and the Triangle, the Triangle has its corner very close to the corner of the Mizpah, and we are right on the line of the Triangle, and about, a little bit more then half way to the west.

Q. In that cut was there a ledge, a vein?

A. In what one are you speaking about?

Q. In the one that is north.

A. My recollection of it is, it was simply a streak in the riolite discolored with manganese, of which there are a number, and they showed along in the road, at the cut of the road leading up to the North Star.

Q. Were not there some croppings just about this cut,

(Testimony of Frank M. Ish.)

croppings similar to the croppings above there, where you did your work? A. Somewhat.

Q. Now, as a matter of fact, are not the croppings right down from where you did your work, right down to this cut, and right down into the flat, more or less?

A. Oh, no, sir.

Q. The croppings are pretty heavy up there where you did your work, are they not?

A. Yes, pretty fair croppings.

Q. As you come down don't you find some other pretty fair croppings?

A. I never examined it very closely, but there is something above the cut, and above the North Star, a little further to the north and west, but it is not the croppings that we have in the Ivanpah.

Q. Now, you have indicated on this photograph the cut, can you distinguish just above the cut some heavy croppings?

A. I know what is there, but I cannot see on that photograph.

Q. Is not that in line with your croppings?

A. No, sir.

Q. What is the difference between those?

A. Those have a strike to the northeast and southwest, those croppings just above the cut, and the one where I located has a distinct course, distinct strike, and in the course of its strike it would come below the North Star tract.

Q. I am speaking about the character as croppings?

(Testimony of Frank M. Ish.)

A. They are not the same.

Q. As indicating the croppings of a ledge?

A. Yes.

Q. You would term them croppings, wouldn't you?

A. Which one do you refer to?

Q. The one just above the cut, which you say Dave Lewis excavated?

A. There was some croppings, they are of a different nature somewhat than the surrounding rock.

Redirect Examination.

Q. Counsel was asking you about the place where Mr. Ray worked being in line with the work that you say was done in February in this cut. Will you explain to the Court and state whether or not that work in the cut was on the strike or course of your vein, where Mr. Ray did the work?

A. No, it is not in the strike, not at all, the cut is not in the strike of the vein, that I did the work in the Ivanpah, at all.

Q. If the place where Lewis did the work in February is, it is a parallel vein some distance off then?

A. Yes, it would be a different strike.

Q. How far off?

A. It would be a difference—they would diverge at probably a hundred feet, or more, and continue to diverge as they went north.

Q. How long have you been mining?

A. I have been engaged in mining more or less since 1880; I have been actively engaged in mining since then.

(Testimony of Frank M. Ish.)

Q. You have had experience with values and ground over in Tonopah? A. Yes, sir.

Q. Does the colored streak in the cut that you say was dug on or about February, 1902, contain any values, mineral values?

A. I would not take it that it did; I don't know that it did or did not; it didn't look to me as though there was anything of value in it; I would not follow it at all.

Q. Your attention was called to a stake, or you testified here with reference to seeing a stake marked "Dave Lewis Hope," on a trail, subsequent to April or May of 1902; was or was not that stake in a monument?

A. It was not.

Q. Describe to the Court where it was situated, and how close to this trail that you testified to?

A. Why, it was about 12 or 15 feet away from the trail, and there was a little natural, just a little hummock, I won't undertake to describe it, just simply a natural hummock, some four or five feet long, and probably stuck up there a foot, and this stake was sunk in that, and some bowlders, I should say that there was probably a half dozen bowlders, ranging from four to six inches, piled around it, that was all.

Q. Point out to the Court the North Star working shaft, the present working shaft, on that large photograph, if you please?

A. This is the shaft and this is the engine-house. (Indicates.)

Q. What number is there marked on the photograph?

(Testimony of Frank M. Ish.)

A. Number 3.

Q. Can you point out to the Court there any of the other points that have been testified to?

A. The Ivaupah work location shaft is there. (Indicates.)

The COURT.—About how many feet west of the North Star shaft?

A. Oh, I should say about 400 feet, maybe a little bit more, and the location of the monument of the Dave Lewis Hope is up there. (Indicates.)

The COURT.—That would be about how far and in what direction from the North Star?

A. That would be north and east, quite a variation from north over to the northeast, and it would probably be 450 to 600 feet, some place there, I don't know just how far.

Q. In the neighborhood of 500 feet.?

A. Yes, it lays over the hill; probably more than 500 feet measured up that way.

Q. Mr. METSON.—Can you show the point where the stake was?

A. Yes, I can show the location of that stake; that is the last lease that took out ore, is right there, it is right in behind that. (Indicating.)

Q. The COURT.—What does this indicate. (Pointing.)

A. That is the Montana.

Q. About how many feet east of the Montana?

(Testimony of Frank M. Ish.)

A. The nearest location to any point is the assay office of the Tonopah Company, and from there up to there would be about 250 feet; I am approximating that also.

Q. (Mr. METSON.) The stake that you last testified to is the one that you say you saw there subsequent to April or May, 1902? A. Yes, sir.

Q. What is the strike of that streak of color in the Dave Lewis cut that you say was made in February, 1902?

A. Why, it is somewhere north, and probably a little bit northeast and southwest; no, hold on! If your Honor please, I have got to explain again my hesitancy in answering that thing is to square myself with that country, and the direction, and the points of the compass. Yes, it is to the north.

Q. (Mr. GOODWIN.) That is the strike in the Dave Lewis cut? A. Yes.

Q. Was the monument where you say you saw the Dave Lewis Hope location in the same place when you last saw it as when you first saw it? A. Yes.

Q. And about when did you see it last?

A. Why, within the last seven or eight months; I cannot say just when; I do not think I have been up there since I have been in Goldfield; seven or eight months ago, about.

Q. Seven or eight months ago? A. Yes.

Mr. LORIN O. RAY, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business?

A. I have been engaged in mining for the last twelve or fifteen years.

Q. Where do you reside now?

A. At the present time I am working a lease at Goldfield, and prospecting.

Q. How long have you been at Goldfield?

A. About five or six weeks.

Q. Where did you reside before going to Goldfield?

A. At Ray and Tonopah.

Q. Where is Ray?

A. Eight miles north of Tonopah.

Q. When did you first go to the Tonopah Mining District?

A. May 12th, 1901, I landed in Tonopah.

Q. Are you acquainted with the location designated in this case as the Ivanpah mine? A. Yes, sir.

Q. About when did you first become acquainted with that location?

A. Some time about the 12th or 13th of October, 1901.

Q. You may state the circumstances of becoming acquainted with it?

A. I was connected with Mr. Ramsey in some claims north of Tonopah, and was working on those claims at the time, and I came in town in the evening, and Mr. Ramsey told me that he had located me in a tunnel site on Oddie Mountain, and he said the first time—

(Testimony of Lorin O. Ray.)

Mr. GOODWIN.—I object to what Mr. Ramsey said.

The COURT.—Yes, as to what he said.

Q. Mr. Ray, please try and avoid what anybody said.

A. Well, I went on, and a few days later I went up to examine the ground.

Q. What ground?

A. This North Star tunnel site ground. It was located on the north side of Oddie Mountain, down in the flat, part of the ground; I went to the location monument and read the location. Prior to that, five or six months, this tunnel site had been located by Mr. Wils Brougher, T. L. Oddie and Mr. Gayhart; Mr. Gayhart had surveyed this tunnel site.

Mr. GOODWIN.—What has this tunnel site got to do with this matter?

Mr. PITTMAN.—It is preliminary.

Q. Go right along.

A. And I first went to the location. Mr. Oddie and Mr. Brougher and Mr. Gayhart had abandoned this tunnel site; I seen it had been located by Mr. Ramsey and Mr. Golden and myself and a man by the name of Catton; I began at the location notice went up the hill 300 feet, there found three small mounds of dirt that marked the first 300 feet of the North Star tunnel; in those mounds was struck little pieces of board about so long (measuring about a foot), marked "North Star Tunnel Site." I then went 300 feet further, and found three other monuments representing the second 300 feet of the

(Testimony of Lorin O. Ray.)

North Star Tunnel site, and went onto the top of the ridge, and there found three other monuments representing the same; on this ridge you can look to the north and to the south and to the east, and see all of Oddie Mountain, on the west slope, and north. I then went on still further south 300 feet, and found three mounds, and on through to the Mizpah claim, seeing this was the tunnel site, Mr. Ramsey had located, this taking me about 2500 feet from the location monument of the North Star, directly south. I then came back onto the hog back, where the third monument stood, of the 300 feet, and looked to the east; about 300 feet to the east of me stood a monument; I went to that monument, and in that monument stood a stake, and on that stake was written "Dave Lewis Hope Claim, August 26," and signed, "Lewis and Carr," the first part of the name I don't remember now. When I got up there I sat down and figured that if there was a claim in there covering this tunnel line of ours, as a tunnel, as I thought at that time, held no ledges cropping on top of the ground, that it would be very important ground to have; this being the only monument that I seen on the slope of the mountain after I left the northeast corner of the Mizpah mine, I stepped from that monument, supposing to step three foot at a step, down to the North Star tunnel line to the west; and as near as I could get at it it made it about 300 feet; then I went from the brow of the hill further to the west, about 150 feet, and seen a monument; I went down to this monument, and saw

(Testimony of Lorin O. Ray.)

that it was located the Ivanpah claim by F. M. Ish; then stepping back to the tunnel line to the east from this monument, I figured it at about 150 or 200 feet; going then on back to the Dave Lewis Hope claim, I figured there was no chance to get any ground between the Ivanpah and Dave Lewis Hope claim. I then went and read the notice of the Dave Lewis Hope again, and it was located running 500 feet northwest, and one thousand feet southeast; there was one monument there with a post in it. I then went across from there—which stood up close to the apex of the mountain—I then went across from there to the Hudgens tunnel, going a thousand feet almost to the southeast, and saw no stakes and no monuments; there was no stakes and no monuments with the exception of the one, the Dave Lewis Hope, and the one on Mr. Ish's claim on the west side of Oddie Mountain, until you got to the Mizpah lines, or down to the Lucky Jim corner.

Q. Did you ever have any further dealings with this Ivanpah location?

A. I did; along about the last of October, I was at that time working for Mr. Oddie and Mr. Peters on the lease, and about the 28th day of October I quit working for them, told Mr. Peters that day that I had some work to do, and I would have to quit, and the next day or that evening, Mr. Ramsey and I had a talk about the tunnel site, and he said "You had better go over there and go to work," so on the 29th I went over there and went to work on the tunnel site.

(Testimony of Lorin O. Ray.)

On the evening of the 29th, I think it was, I came into town and saw Mr. Ish, and he told me he was going to start to Colorado in a few days, and that he would like for me to do this work on the Ivanpah claim; I told him I would; he says "Croslett will go and show you where I want the work done, and furnish you the tools and powder to do it with." The next day I went back over the tunnel line, across the Mizpah, there was a kind of trail over there over the tunnel line, and came down where the monument was, and looked the ground over, preparatory to going to work; went back to the tunnel site and went to work. The next day Mr. Croslett furnished me tools and ammunition; it was very cold weather at that time, and I took them up the next morning with Mr. Croslett, and laid them there where he told me he wanted the work done. I went back to the tunnel site and went to work, worked until noon came, went back to work up on the hill in the afternoon, as it was warmer in the afternoon than in the forenoon. Up till the 23d of September, I spent the greater part of the time on that mountain, either on Mr. Ish's claim or on the tunnel site. Walking up that way and going over the mountain, I came from the tunnel site up over the mountain down to Mr. Ish's work, and then from Mr. Ish's work down town, and for the month of September, 1901, I don't think there was four days I was not over that mountain.

Q. What kind of work did you do?

(Testimony of Lorin O. Ray.)

A. The work I done for Mr. Ish was a cut run into the hill a little on the incline, about four foot at the bottom, and I would judge about 15 feet long, leaving the face of the cut about ten foot to 11 or 12 foot, or the opening up the ledge in the face of the cut.

Q. Did the ledge show in the bottom of the cut to the face?

A. It did, sir; from the bottom to the top, in the face of the cut.

Q. What kind of a vein was it that you cut there?

A. The ledge is about, I should judge three to four feet wide on top, crops about 20 or 30 feet; a part of it is a very dark, looks like burnt up porphyry, and the other is a lighter color. I have taken four assays from that myself, they run from a dollar twenty to four eighty, four assays.

Q. What did the values consist of, what kind of metal?

A. Gold and silver.

Q. Do you know where this cut situated north of the North Star shaft is; are you familiar with that cut?

A. Yes, sir.

Q. When was the first time you ever saw that cut?

A. The first time I saw that cut was some time, I think, about the 15th of February, 1902.

Q. What is the character of the ground, the contour of the ground where this cut was made?

A. Well, I would call it a kind of slide rock, or an

(Testimony of Lorin O. Ray.)

overflow that has tumbled down from the mountain there.

Q. Can this cut be seen from the business portion of Tonopah? A. Yes, sir.

Q. After the cut was made, was the cut visible from this hog back that you went over? A. Yes, sir.

Q. Was that cut at that point in the month of December, was there any cut there?

A. No, sir; there was not; the trail that I went over time and again in December, went right to the side, not more than three foot from where that cut was placed afterward; there never was any cut in that mountain during the month of December, or any time previous to that.

Q. When did the cut first appear?

A. The cut first appeared in February. The way I came to notice this was that I was coming in from Ray, and at that time we had a man working in the tunnel, and we were thinking then, the North Star people were thinking at that time of buying this claim of Mr. Ish, and I asked the man that was working on the tunnel what that work was up on the hill, and he said that Dave Lewis was having some work done.

Q. What month was that in?

A. That was in the month of February, 1902. I says, "What is he having work done, what work is he having done," and he says, "I suppose it is the old Dave Lewis Hope claim."

(Testimony of Lorin O. Ray.)

Q. (Mr. GOODWIN.) Who was this?

A. Mr. Canters, the man that was doing our work.

Q. When was the last time that you were over that portion of the hill near where the present North Star shaft is, prior to seeing this cut of the Dave Lewis Hope?

A. Prior to that time?

Q. Yes, prior to the time of seeing it, the last time you were there?

A. I was over the ground several times in January. As I say, out at Ray at that time, I would come in and come to the tunnel, and go in and see how the work was going on, and while in town I would probably go up and over the ground, and go down, and I generally went from town over the hill that way.

Q. The last time that you were on this portion of the hill prior to seeing this cut was in January?

A. Some time in January; I suppose in January I was over that trail four or five times.

Q. What were you doing up there in the month of January?

A. Well, I was interested in the work and interested in the company; I was helping to pay the men that was doing the work; and naturally would be looking after my interests; that is what I went there for principally; in fact, the work was left with me there, for me to look after.

Q. Do you know whether or not any portion of what is known as the Lucky Jim claim lapped onto the Ivanpah claim?

(Testimony of Lorin O. Ray.)

A. The Ivanpah lapped onto the Lucky Jim; the Lucky Jim was a prior location.

Q. When did you find that out?

A. I found that out after Mr. Ish had sold this claim to the Tonopah Company, or to the North Star Company. The way I came to find that out, Mr. Blumenthal and myself were dickering with Mr. Ish for this claim.

Q. What month were you dickering with him for this claim?

A. I think it was in January or February, I ain't sure which; and Mr. Ish I think at that time wanted a hundred thousand shares in the Company if we incorporated; and Mr. Blumenthal says, "What do you know about the Ivanpah claim?" "Well," I says—

Mr. GOODWIN.—I object, your Honor. Objection sustained.

A. Well, anyhow, I went up there the next day and examined the Ivanpah claim, and examined all the corners; took the Lucky Jim corner and saw how much it cut off the Ivanpah corner, seen how much the Silver State cut in; went down on the other side and seen where everything else cut; went back and told Mr. Blumenthal—

Mr. GOODWIN.—I object to that. Objection sustained.

Q. Well, you saw that, did you? A. Yes.

Q. How close to the North Star working shaft is the upper end of the Lucky Jim corner.

(Testimony of Lorin O. Ray.)

A. About 45 feet.

Q. On that trip when you were examining the corners of the Lucky Jim claim had this cut been put in the hill by Dave Lewis.

A. It had not.

Q. Could it possibly have been there without you seeing it? A. It could not.

Q. Now, when is the last time that you saw this monument marked "Dave Lewis Hope"?

A. When was the last time I saw it?

Q. Yes. A. About four months ago.

Q. Was it in the same condition that it was when you first saw it?

A. The same place as when I first saw it.

Q. How far would you consider that stake is from the top of Mount Oddie, the apex if it, the point, approximately?

A. Well, I should think it was over 125 feet, something near that; of course, I never measured it.

Cross-examination by Mr. GOODWIN.

Q. Are you interested in the company, Mr. Ray?

A. I am not now, no, sir.

Q. Have you been at any time? A. Yes, sir.

Q. When?

A. I was interested until last winter some time.

Q. What interest did you hold?

A. At first I held a quarter interest, and at last I

(Testimony of Lorin O. Ray.)

held an eighth; I sold a quarter interest to Mr. Blumenthal.

Q. When I say the company, I mean the defendant company?

A. Yes, sir, the North Star.

Q. Do you know whether or not the North Star Company acquired the Dave Lewis Hope claim, or got any conveyance from Lewis?

A. No, sir, they did not.

Q. Did they directly or indirectly?

A. No, sir, not that I know of.

Q. Did Davis get a conveyance from Lewis?

A. I don't know anything about it.

Q. You don't know anything about it?

A. No, sir. I had very little to do after the company was incorporated, only held my portion of the stock.

Q. Did you ever examine for stakes there around the Dave Lewis Hope claim? A. Yes, sir.

Q. And could find none?

A. No, sir; only this one monument; the only one that was ever on that part of the hill at that time.

Q. The only one? A. Yes, sir.

Q. You noticed particularly the date of the location? A. Yes, sir.

Q. It was the 26th? A. The 26th.

Q. You knew at that time that the time had not expired, didn't you? A. Yes, sir.

Q. You knew during all that time that Lewis was

(Testimony of Lorin O. Ray.)

claiming a mine up there on the side of the mountain, did you not?

A. Yes, sir, I did; I knew up till December that he was claiming a mine; he had none after that time; up till December he claimed a location up there, and never done his work, and he had none after that.

Q. That is your legal construction?

A. I know, because the work never was done.

Q. I say that is your legal construction of it?

A. I don't know whether you call it legal or what you call it, if a man is there every day and sees it, he don't have to be a miner.

Q. Well, didn't you know that he claimed it after December?

A. Didn't I know that he claimed it after December?

Q. Yes.

A. He may have claimed it, he may claim it yet; he is dead, and he may claim it yet, I don't know.

Q. Don't you know, personally, that he claimed to own a mine up there after December?

A. Well, I think he did, yes.

Q. Didn't you personally know that at least in February, he was doing work there?

A. Yes, sir; he had men doing work, he didn't do the work himself.

Q. You knew that as a fact?

A. Yes, sir; I know that the work was done there.

Q. You saw them at work. did you?

(Testimony of Lorin O. Ray.)

A. I did not.

Q. How do you know that he had?

A. I know the work was done.

Q. You know the work was done? A. Yes.

Q. How do you know that he had it done?

A. You will find that out later on.

Q. How do you know that he had it done?

A. How do I know?

Q. I want to treat you perfectly fair.

A. Well, ask the question again.

Q. How do you know that he had the work done?

A. Well, how I know is, that I know people that paid for the work, and know the men that did the work.

Q. Who paid for it?

A. Mr. Davis paid for it.

Q. Mr. Davis paid for it? A. Yes, sir.

Q. On whose account? A. For Mr. Lewis.

Q. Who were the men that did the work?

A. Mr. McCune and Mr. Enright.

Q. You knew that he did work there in February at least? A. Yes, sir.

Q. And paid for it? A. Yes, sir.

Q. And don't you know of his asserting other claims to the property? Don't you know that he asserted other claims to the property?

A. To what property?

Q. To what is known as the Dave Lewis Hope claim, up there on the hill, whatever it may be?

A. No, sir, I don't know anything about it.

(Testimony of Lorin O. Ray.)

Q. Don't you know, and didn't you as Justice of the Peace down there, acknowledge deeds that he made to certain parties to whom he professed to sell this property?

A. Yes, sir, I did.

Q. You knew then that he was asserting title?

A. A Justice of the Peace is not supposed to know whether a man has got title or not.

Q. A Justice of the Peace is not supposed to know much, Mr. Ray, I will admit that; but you knew that he claimed the right to sell that, didn't you, when you were acknowledging those deeds?

A. Yes, sir; I ain't supposed to know what man owns property when he acknowledges a deed, unless some lawyer comes in that knows a whole lot and tells me.

Q. Now in June, 1902, did you know that he or his grantees were asserting interests or claims to that property?

A. Sir?

Q. In 1902, June 10th, did you know that he or his grantees were asserting an interest in that property, or claiming it?

A. I know him; I don't know his grantees; I don't know what you mean by that.

Q. Parties to whom he may have conveyed?

A. No, sir; I do not; as I say, I know nothing about what transaction occurred with the company after it was incorporated, with Lewis or anybody else.

Q. The company was not incorporated until July, was it? I think it was the 2d of July or somewhere

(Testimony of Lorin O. Ray.)

along there. Now, on the 10th of June wasn't a notice served on you, while you were up there on the ground, just as you were starting squaring off to sink the North Star shaft? A. No, sir.

Q. Was a copy served on you?

A. Not that I remember of.

Q. Did you hear of a notice being served by Doctor Porter on the people who started to sink that shaft there about the time they commenced to grade for the first work they did?

A. No, sir, this is the first time I ever heard of it.

Q. Is this the first time you ever heard of it?

A. Yes.

Q. Did you hear of a notice of some kind being nailed up there and handed to the foreman, and a copy enclosed and sent to the manager or president or secretary of the corporation, whoever was doing that work there? A. I did not, sir.

Q. You never heard of that?

A. No, sir; as I say, after the company was incorporated, I left the whole matter to Mr. Golden and Mr. Ramsey, and others of the board.

Q. That was before the company was incorporated; I am asking now with reference to the 10th of June; the company was not incorporated until July?

A. No, sir; I know nothing about it.

Court adjourned until July 14th, at 10 A. M.

(Testimony of Lorin O. Ray.)

Court convened, July 14th, 1904, at 10 A. M.

Mr. GOODWIN.—Mr. Metson, there is one fact, an allegation that your application was made September 19th; we allege that you made your application the 19th day of September; you deny you made it on the 19th, and allege that you made it on the 14th, and published it on the 14th or prior to the 19th of September. I would like to have it appear that the fact is that the application for patent was filed on the 14th of September, and the first publication was made on the 19th of September.

The COURT.—It is admitted that those are the facts; that is a matter there should be no controversy about.

Mr. PITTMAN.—Those are the facts in regard to it.

Cross-examination of Mr. L. O. RAY (resumed).

Q. Mr. Ray, you mentioned about going along a trail past the point where this cut was run?

A. Yes, sir.

Q. That was the fact, was it? A. Yes.

Q. Where did you go from, and where did you go along this trail?

A. I went from the town up over the Mizpah, coming onto the North Star tunnel line, and this trail followed over the North Star tunnel line.

Q. Where did this trail go to, what was its objective point?

A. It seems as though the trail was really blazed by the surveying and marking out of the tunnel line.

(Testimony of Frank M. Ish.)

Q. Is it not a trail traveled in going from one locality to another?

A. There was very few trails or very little traveling on the hill at that time.

Mr. FRANK M. ISH, recalled by defendant, testified as follows:

(By Mr. METSON.)

Q. Where were you born?

A. I was born in California.

Q. You say you put a notice on or about the 10th of October on this Ivanpah location? A. Yes.

Q. State whether or not any name was given in that notice to the location? A. Yes, sir.

Q. What? A. It was called the Ivanpah.

Q. Can you state the contents of the notice?

A. Well, I can in a measure; I think I can pretty well.

Mr. GOODWIN.—I object; in case it was recorded, the record is the best evidence.

Mr. METSON.—It is what is called a certificate.

The COURT.—I will allow it.

A. It read this way: "I, F. M. Ish," or "Frank M Ish," I don't remember which, "hereby claim 500 linear feet on this ledge or lode of mineral-bearing quartz, running 800 feet northerly and 700 feet southerly, together with 300 feet on each side of the vein. This claim is

(Testimony of Frank M. Ish.)

situated on the west and northwest side." I think I described it as the Tonopah Hill or Oddie Mountain, I don't remember which, my recollection is not clear about that; I remember of bounding the claim on the south with the north side line of the Mizpah, and connecting it also with the Lucky Jim and Triangle, which I lapped; and named it the Ivanpah, dated it and signed it.

Q. What date was on it, if any.

A. 10th day of October, 1901.

Q. You speak of the Mizpah; what mine was that?

A. That is the Mizpah claim belonging to the Tonopah Mining Company.

Q. State whether or not that was a well known or little known claim?

A. It was the best known claim in the district; it was then being extensively worked, and as I understood it at that time, was one of the first locations in the district, one of the best known in the district at that time.

Q. What do you mean by best known—a few people knew it best?

A. No, the general public knew it best; it was more generally known than any other claim in the district, and at that time was a great producer.

Q. As to the people who were there in the district, did a few know of this mine, or a majority; describe generally what you would designate as the proportion or number who would know this claim, or not know it.

A. It was generally known; I suppose anybody at all

(Testimony of Frank M. Ish.)

familiar with the district knew of the distance and location of the Mizpah claim; it was a noted claim.

Q. Now, I neglected to ask you the other day the distance from one monument to another when you were describing that claim.

Mr. GOODWIN.—I think he gave the distance, 750 feet down to the center, and 750 feet down to the corner.

The COURT.—I think he stated the distances, but there is no objection to having it repeated, if there is any doubt about it.

Q. I have a doubt in my mind about having proved the length. Just describe as quickly as you can the length and breadth of the claim.

A. Commencing at the northeast corner, run 600 feet west to the northwest corner, then 750 feet southerly to the west center side line, then 750 feet southerly to the southwest corner; thence easterly 600 feet to the southeast corner; thence northerly 750 feet to the east side center; thence 750 feet to the place of beginning.

Q. And one other question I neglected to ask you, or I don't know whether I did ask you or not. State whether or not there was any monument at the time you were on this ground in October at the place or near the place where this Dave Lewis Hope work was done, this cut that we asked about? A. In October?

Q. In October, was there any monument at that cut, or near where the cut was afterwards made?

A. No, sir, there was not.

(Testimony of Frank M. Ish.)

Cross-examination by Mr. GOODWIN.

Q. Was the Mizpah at that time one of the what was known as the Butler group, Mr. Ish?

A. Why, yes, it was located by Butler.

Q. And the Butler group was just as well known there as the Mizpah, wasn't it?

A. I never heard it spoke about more than as the Butler group, but it was a notorious fact that it was located by Butler.

Q. He had a group of mines there generally referred to and known as the Butler group, didn't he, at that time?

A. I never heard it referred to in that name.

Q. One of which was the Mizpah? A. Yes.

Q. Now, you posted that notice on the 10th of October? A. Yes.

Q. You posted it yourself? A. Yes.

Q. After you posted it, what did you do with it? Did you make a copy? A. No, sir, I did not.

Q. You made no copy of the notice that was posted?

A. Well, now, I believe that I did, but the copy of the notice, I mean a certificate of it that I—I don't remember, I don't recollect certain whether I copied the notice then or not.

Q. Did you have your notice of location recorded?

A. Did I?

Q. Or did anybody on your behalf have your notice of location recorded? A. Yes, sir.

(Testimony of Frank M. Ish.)

Q. Did you have any instrument recorded relative to the Ivanpah other than your notice of location, prior to the 1st day of July, 1902? A. Yes.

Q. Well, now, did you?

A. State the question again.

Q. Did you have any document recorded other than your notice of location, from the 10th day of October, 1901, to the 1st day of July, 1902?

A. I don't remember the date of the filing of the amended certificate of location, but other than that there was no paper recorded.

Q. Did you ever look over the records there in Tonopah, the district records, with reference to the Ivanpah claim?

A. I think that I did, but don't just remember when.

Q. Don't you know as a fact, Mr. Ish, that from the 10th day of October, 1901, to the 1st day of July, 1902, there was not on those district records any record relative to the Ivanpah claim, excepting the record of your notice of location? Don't you know that to be the fact?

Mr. METSON.—The record is the best evidence.

Q. He examined it, and we want to get this thing straight.

A. I don't know whether there was or was not.

Q. Don't you know as a fact, that during that period of time, you never prepared and presented to the recorder for recordation anything but a copy of your notice of location?

(Testimony of Frank M. Ish.)

A. I remember as a fact that I did not present to the recorder anything myself, individually, anything to be recorded.

The COURT.—There was but the one paper recorded?

A. That is all there was.

Mr. GOODWIN.—What I want to get at is this: At some period of time, I don't know when, but at some period of time, that notice of location, which was recorded as a notice of location, and which the District Recorder certified time and again as a certified copy of the notice of location, by some metamorphosis, changed into a certificate of location.

The COURT.—He did not take that to the County Recorder; he never took but one paper; so far as he knows, there never was but one paper, whether it be called a certificate of location or notice of location.

Q. Now, Mr. Ish, will you tell the court when that notice that was recorded on the 8th day of January, 1902, first came to be described as a certificate of location?

A. I cannot understand what you mean; I do not know what you mean by "first came to be described."

Q. For a long time didn't you consider that record there that was made the 8th of January, a copy of your notice of location? A. Why, largely, yes, sir.

Q. Now, when did you commence to consider that not a notice of location, but a certificate of location?

(Testimony of Frank M. Ish.)

Mr. METSON.—I object to that, may it please the Court, as assuming something not proven, and asking for his consideration.

The COURT.—I will allow the answer.

A. As near as I could remember, as soon as it was recorded I always considered it was a certificate of location; and it went to the record as a certificate of location, and was such.

Q. Didn't you know that the record as made there did not contain across the top of that, or heading that notice, the words "Certificate of Location"?

A. I do not know, sir, that it did not.

Q. Haven't you seen that record when it did not contain that description, "Certificate of Location"?

A. No, sir, I have not; I never did.

Q. Did you ever see the record with "Certificate of Location" on there?

A. I am utterly unable to answer you whether I did or did not.

Q. You don't know whether or not the words "Certificate of Location" are on the record to-day or not?

A. I do not positively know; my impression is that I saw the record, and that it was there, but I do not know for certain.

Q. Then there is no question, Mr. Ish, but what that paper recorded the 8th of January, is the only paper that you recorded from the 10th of October, 1901, up to

(Testimony of Frank M. Ish.)

the 1st day of July, 1902, in relation to the Ivanpah claim? A. I think so, yes, sir.

Q. Will you indicate on this photograph, as near as you can, the corner post that you said you saw down there in the flat somewhere, marked the "Dave Lewis Hope." (Complainant's Exhibit 3.)

A. Yes, I think that thing lay, with reference to this lease, about there somewhere. (Indicating.) I cannot say whether this is the dump that laid alongside of there or not, but about there.

Q. Just mark that, please; mark it "I. D. C."

(The point is so marked on Complainant's Exhibit No. 3.)

Q. What were the marks on that corner?

A. I don't remember.

Q. Only that it indicated the Dave Lewis Hope?

A. That is all.

Q. Now, taking that as a corner; that is, assuming that it was the southwest corner of the Dave Lewis Hope, and projecting a claim 1500 feet in a northwesterly direction, slightly west of north, where would it take it? Indicate on this photograph, with reference to the Ivanpah ground.

Mr. METSON.—I object to any such assumption.

The COURT.—Well, I will allow the question.

A. It is quite a wide open thing to lay a claim that way.

Q. Assuming this; this is simply speculation. As-

(Testimony of Frank M. Ish.)

suming that is the southwest corner of the Dave Lewis Hope, and that the Dave Lewis Hope claim lay northwest and southeast, being just slightly west of north, where would a claim projected 1500 feet from that corner on that course carry you? Just indicate the general direction by drawing a line. A. Across here.

(Marking on Complainants' Exhibit No. 3.)

Q. It would come some place across as you indicated there? A. Yes.

Q. Now, give us the directions of north and south, that is the strike and line on that photograph which indicates your idea of north and south on that photograph.

A. (Indicating on Complainants' Exhibit No. 3.) I will say I am always confused on that hill.

The COURT.—Which is north on that photograph?

Mr. GOODWIN.—North lays across the photograph, as we understand.

Q. Come to this large photograph for the purpose of getting the direction. We understand north and south lies across the country that way. (Indicating on large photograph.) Now, if your Honor will notice, there is a range back there, and here is the hog back. Indicate to the Court whether or not the point designated by my finger there as a point on the hog back west of Mount Oddie, is the point indicated by my finger on the photograph, just east of the point indicated by you as your discovery point? A. That is the same hog back.

Q. Then, if the pencil as you laid it there is north

(Testimony of Frank M. Ish.)

and east on the large photograph, would the pencil as laid on the smaller photograph represent the same line?

A. Same thing, yes, sir.

Q. Now, will you please indicate by marking that line on the smaller photograph (Complainants' Exhibit No. 3), north and south.

A. Well, I should say in here, about as near as I can put that, north and south would be like that. (Marks line on photograph.)

Q. Now, if that is approximately a north and south line, taking the point as indicated by you as the southwest corner of the Dave Lewis Hope, and projecting a claim in a northwesterly direction, slightly west of north, just indicate there where the west side of the claim would be.

A. Well, I could not tell about that; to where it would be the west side line?

Q. Yes.

Mr. PITTMAN.—Is there any evidence as to the southwest corner whatsoever?

Mr. GOODWIN.—This is all hypothetical; he says he saw a stake down there, and he is locating where he saw that stake, and I am assuming that is the southwest corner of the Dave Lewis Hope, and on that assumption this is all being made.

A. That line on that assumption would be somewhere in there; I could not tell how much it would deviate. (Indicates.)

(Testimony of Frank M. Ish.)

Q. Now, Mr. Ish, would such a location cover approximately the ground that was covered by the Ivanpah?

A. Well, assuming that that corner was a monument, I suppose it would cover a large part of the Ivanpah.

Q. What you have said with reference to that assumption would be true with reference to any assumption; that would place the southwest corner of the Mizpah down in that immediate neighborhood?

Mr. METSON.—We do not think it is competent to assume these matters.

The COURT.—You cannot tell where the corner is unless you assume it; there is no survey and no map, and you will have to assume it if you run it at all. The courses and distances have not been defined in any other way, except upon the assumption that it starts in a certain place. I see no way of proving either one of the claims by any definite testimony. A map would help the witnesses materially in the testimony; we would have something as a basis to go on, and I have been liberal in this, for the reason I did not see any other way of getting at it in the way it is presented. (Question read.)

A. Well, it would take a considerable part of the east side of the Ivanpah claim.

Q. Now, the claim as we have described the Dave Lewis Hope, and by "we" I mean the witnesses on the part of the plaintiff, don't you understand that that

(Testimony of Frank M. Ish.)

claim as so described, practically takes in the Ivanpah ground?

A. No, sir; the claim as described as the Dave Lewis Hope, you mean as you described it?

Q. Yes.

A. Taking the location cut that you claim, which is near the North Star shaft?

Q. Yes.

A. Well, I suppose that would cover a considerable portion of the Ivanpah claim.

Q. Are you a stockholder, Mr. Ish, in the defendant corporation? A. Yes, sir.

Q. To what extent?

A. Why, I own about some forty odd thousand shares.

Q. At what capitalization?

A. A capitalization of 750,000.

Q. When did you become a stockholder?

A. It was in June, I think, the latter part of May, or June 1902.

Q. It was as soon as the corporation was organized?

A. Yes, sir.

Redirect Examination.

Q. Was this post that you speak of near this trail, was that marked "Dave Lewis Hope" or "Mizpah Intersection? A. It was marked both, if I recollect.

Q. Well, give us your best memory on that?

A. I think it was marked just that way, Mizpah In-

(Testimony of Frank M. Ish.)

tersection of Dave Lewis Hope. I know now, recall quite distinctly, that it was marked Mizpah Intersection on there; also my recollection it was marked Dave Lewis Hope, or might have been this way, Mizpah Intersection or Dave Lewis Hope.

Q. When did you see that post?

A. I first saw that post, I think it was in June, 1902.

Q. Now, you have been asked about notices of location, and about the records; did you ever know of a notice of location record being changed in any way?

A. No, sir, I do not; I never heard that it was changed, and never knew anything about any such transaction as that.

Q. Did you ever cause any change to be made on the record?

Mr. GOODWIN.—You misunderstood me; I do not intimate there is any change on the record; I do not think there is; what I mean is, that there is just the one paper.

Q. Now, have you told Judge Hawley all that you know about the notices of location, or the records of location; if not, tell the whole thing.

A. I think I have told about the record, of the posting of the notice on the Ivanpah, and how it was recorded, how it was done by George Croslett at my request.

Q. Do you know anything further about it?

A. I do not; that is, about the recording.

Mr. JOHN McCUNE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business?

A. I guess you would have to call it a miner and prospector; I am a propsector, you might say.

Q. How long have you been a prospector and miner?

A. Ever since 1879; ever since I left my father and mother.

Q. How long have you been in the State of Nevada?

A. Well, I have been in the State of Nevada I guess about, I think in 1890, if I remember right.

Q. Were you ever in Tonopah, Nevada?

A. Oh, yes.

Q. When did you go there first?

A. Along about June, 1901, I believe.

Q. Did you know a man there by the name of Dave Lewis? A. Yes.

Q. When did you first meet Dave Lewis?

A. In Tonopah.

Q. About when, do you know when you first met him?

A. Met him just about the time I came in there; seen the old gentleman off and on, and afterwards got acquainted with him.

Q. Did you ever do any work for Dave Lewis?

A. I did.